S. HRG. 98-500

NOMINATIONS—OCTOBER—NOVEMBER

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

NOMINATIONS OF

OCTOBER 5, 1983

HON. CLARENCE J. BROWN, TO BE DEPUTY SECRETARY OF COMMERCE; AND TERRY CALVANI, TO BE A COMMISSIONER, FEDERAL TRADE COMMISSION

NOVEMBER 3, 1983

SANDRA ARMSTRONG, TO BE A COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

NOVEMBER 7, 1983

NEAL B. FREEMAN, TO BE A MEMBER, BOARD OF DIRECTORS, COMMUNICATIONS SATELLITE CORPORATION; AND JAMES T. HACKETT AND WILLIAM LEE HANLEY, TO BE MEMBERS, BOARD OF DIRECTORS, CORPORATION FOR PUBLIC BROADCASTING

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NOMINATION—DEPARTMENT OF COMMERCE

WEDNESDAY, OCTOBER 5, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:01 a.m., in room SR-253, Russell Senate Office Building, Hon. Barry Goldwater, presiding.

Staff members assigned to these hearings: Marguerite Ayers, professional staff member; and Liz Tankersley, Larry Fullerton, Loretta Dunn, and Cheryl Wallace, minority staff counsels.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The meeting will come to order. The President has submitted to the Senate the nomination of Clarence J. "Bud" Brown of Ohio to be the Deputy Secretary of Commerce. He has been nominated to succeed Guy Fiske, who has resigned.

I will not go into his detailed background. It is very impressive. I have known Mr. Brown, I guess, since before he was a twinkle in his father's eye. I knew his father before him and served with him and have great respect for the whole family. They have made a great contribution to Ohio, a great contribution to our country, and a very fine contribution to a profession in this country that has been going downhill since they invented the type.

So let me welcome you. If there is anything you want to say, just charge in.

STATEMENT OF HON. CLARENCE J. BROWN

Mr. BROWN. Mr. Chairman, I am pleased to address you this morning as the President's nominee for the position of Deputy Secretary of the Department of Commerce.

I have chosen, as you noted, to eschew the frequent practice of asking one of your colleagues or one of my former colleagues to introduce me because I know so many of the Members of the Senate so well. I have shared service in the House with one-fifth of the present Members of the Senate, including four members of this distinguished committee.

Several of you and I have campaigned together and many of you and I have served—perhaps "suffered" is the right word—on conferences together threshing out legislative details on issues of consequence.

Little I say, therefore, today could change your judgment of me, but if I may have a moment to discuss my background beyond con-

gressional service perhaps you will understand why I seek your support today.

When Secretary Baldrige discussed the position of Deputy Secretary of Commerce with me, he suggested my role in business terms, my acting as chief operating officer for him, as chief executive officer, with responsibilities for day-to-day management of the Department resting in my hands as he addresses long-range policy issues.

I believe that by training I am particularly well suited for such duties. I was trained with a graduate degree in business administration to be an executive. I have also had extensive exposure as an owner-operator of my own family business to the kinds of management problems often experienced by Federal agencies.

I believe my experience as a Member of Congress representing the Seventh District of Ohio in the other body for 17 years also qualifies me for service with this Department. In that role I was privileged to develop some knowledge in areas which are significant to the country and the Department today—energy, Government reorganization, international economics and trade.

I participated in the development of critical decisions in these areas. As a member of the Joint Economic Committee for 14 years I have attended international meetings and participated in a number of conferences on the subject of international trade, monetary and fiscal policy. As a result, I am familiar with the trade negotiation process and many of the bilateral trade and monetary issues confronting this country.

As a member of the House Interstate and Foreign Commerce Committee, now the Energy and Commerce Committee, I have actively participated in the national debate on such issues as telecommunications, energy and synthetic fuels policy. I have also gained working familiarity with the issues presented by the Law of the Sea negotiations, an area in which the Commerce Department has historically been active.

Finally, as a member of the Government Operations Committee, I am familiar with the organizational issues with which any large Government agency must deal on an ongoing basis in its efforts to achieve economy and efficiency in Government.

These experiences, taken together, provide a broad base of experience upon which I will draw in fulfulling my duties as Deputy Secretary.

In conclusion, Mr. Chairman, let me say that the Department of Commerce and its many constituent agencies serve vital and proper governmental functions. Much of the work of the Department, whether it be the compilation of census data or forecasting tornadoes in the Midwest, does not attract the kind of public notice often accorded other departmental functions, but I have had one of the cities in my district devastated by a tornado, so I am conscious that those who depend on these thankless chores know how essential is the work of the Commerce Department to public safety and to the economy of this country.

In my work in the Department thus far I have developed a new respect for the high caliber and degree of professionalism exhibited by every employee of the Department whom I have met. Under the leadership of Secretary Baldrige the Department is ably carrying

out its mandate and is an organization with which I would be associated proudly.

I am honored to have been nominated for this position of Deputy Secretary of this Department and it is my firm hope that the committee and the full Senate will confirm my nomination. Thank you, sir.

Senator GOLDWATER. Thank you very much. I have just a few questions here.

What steps have you taken or do you plan to take to insure that the acquisition of a class 6 computer for the National Bureau of Standards proceeds as quickly as possible?

Mr. BROWN. We provided, Senator, in the funding of the National Bureau of Standards in 1984 and, I might say without perhaps revealing the details, have given consideration to that issue in the 1985 funding for the Bureau of Standards for the acquisition of that computer.

We have also been working with a method by which the Department is managed, the management-by-objective system, which sets up specific objectives for its divisions, including the Bureau of Standards and put into that list of objectives for the Bureau a process, by time, of the steps that must be taken in acquisition of the class 6 computer, which will be shared, incidentally, with NOAA, to make it more effectively and efficiently operated.

We provided for those timed steps to be checked every few months in the process of acquisition, so I think we will be on schedule on acquisition of the computer.

Senator GOLDWATER. Fine.

Do you envision an expanded role and/or budget for the Institute of Computer Sciences and Technology?

Mr. BROWN. As I said, very simply we do indeed, and that operation in, again, the budget process, has been given adequate consideration for its computer network and interface standards work.

That function in the Computer Sciences and Technology Institute emphasizes the establishment of computer network interface standards. We will see that the Computer Sciences and Technology Institute expands because that is one of the growing areas of development in this country on which many industries are going to be more and more dependent.

Senator GOLDWATER. What role do you see for the Office of Productivity, Technology and Innovation in enhancing national innovation and productivity?

Mr. BROWN. OPTI is one of the areas we are giving additional emphasis because of the importance of technology and innovation in our society in cutting edge industries—those industries that will be the future growth industries of this country.

The Office of Productivity and Technology is, in our consideration, one of the future-oriented areas in which the Commerce Department can, for the business community, encourage the development of new techniques, new technologies of production and scientific activity that will give the American worker and American industry a competitive edge in a world that has grown much more competitive and in which world trade is much more important and, therefore, in which national interests in technology need to be emphasized.

Senator GOLDWATER. I think that is one of the most important roles that your Department can work in and with because we are not going to increase productivity, in my opinion, by thinking that we are still going to be supreme with a monkey wrench and the acetylene torch and the screwdriver.

Advanced technology plays a role in this too, and I hope you will give a lot of your time and, in fact, I would hope the entire agency would give a lot of time and thought to the training of younger people as they are coming up in the fields of new technology which will, if properly applied and used, in my opinion, make it possible for an individual to far outproduce what that individual might have produced 5 or 10 years ago.

I think you realize this.

Mr. BROWN. Absolutely, Mr. Chairman, and I might say the administration also realizes it. As you know, the administration has supported strongly the enactment of Public Law 96–517, which is designed to leave ownership of inventions resulting from Government-sponsored research and development with small business and nonprofit contractors.

Also, on February 18 of this year the President established a new Federal patent policy which left ownership of such inventions with all Government contractors insofar as permitted by law. That kind of activity is the sort of thing in which OPTI will also be engaged in trying to formulate legislation to encourage technological development and innovation by individuals or to transfer the technological and innovative work that is done by defense agencies and NASA into private hands for development. That is where the future of our economy lies.

The traditional industries are important, as anyone from Ohio knows, and we must see those industries strengthened in whatever ways we can, but the cutting edge industries are the ones of the future, just as those traditional industries were cutting edge industries at one time in this economy.

Senator GOLDWATER. Thank you.

As you know, the Department is preparing a request for proposals to further evaluate prospects for commercializing our Government's land remote sensing and weather satellite systems. How do you feel about the proposed commercialization of these systems and do you expect to have a significant role—let us not say you but the Department—in evaluating industry proposals?

Mr. BROWN. Mr. Chairman, as you know, the President early this year decided that an attempt ought to be made to determine whether it is in the national interest to see the weather satellite system and the land satellite system transferred to the private sector.

I support that initiative. As a matter of fact, Secretary Baldrige, when he first discussed the operations of the Department, said that one of our objectives in running the Department—he gave me the modest assignment of making the Department of Commerce the best-run Department in the Federal Government—ought to be to see that the actions of Government that could be done by the private sector should be transferred or we should explore the transfer of those activities to the private sector.

A final decision will simply have to await the evaluation of the proposals that we receive from private industry, if there are any, with regard to their interest in performing the functions now performed by the weather satellite and land satellite systems. If no proposal is determined to be in the national interest, then we will not make the transfer.

During the process of preparing the information for the request for proposal, the Department has made it a policy—and will continue to make it a policy—to keep the appropriate committees of the Congress informed of our actions at every appropriate juncture in this process.

The Secretary and I have not discussed in detail my role and how I will take part in the discussions of those proposals when they come in, but I would assume that I would have some role in that area.

Senator GOLDWATER. Well, I am glad you answered in that way because being a Westerner we are very dependent upon land sensing and also upon weather, whether it is satellite or standard weather. It is most important to us who live out where people do not think we have much weather, but we have it.

Mr. BROWN. You seem to be having some right now and if that system can be improved either by the public sector or the private sector so that we could avoid the kinds of things that are happening in Tucson, we would save a lot of money and some lives, apparently.

I might say in that connection, however, that with reference to the Landsat system we have had the Landsat capability for a number of years and yet we have areas of the world where food production based on soil and water observations from Landsat have not been adequately developed. The Landsat system does give us capacity in that regard.

Private industry, particularly in the oil research area, has done very well in the use of satellite information. But information from the land satellite system has not been as fully utilized as it might be worldwide, and perhaps private interests would develop it much more aggressively.

Senator GOLDWATER. Well, you having been around here know that technical things like remote sensing and weather satellites are things that very few Members of Congress have any idea at all of, and I happen to incline toward the idea of private industry taking this over, although I have to say that the Government weather system has been improving.

There is still a lot to be desired. We do not have enough preciseness in the forecasting of aviation weather, although it is much, much better than it was. And as far as sensing coming problems, I think we are in better and better shape there.

That flood that you mentioned in Tucson is not unusual. When you pour 6 inches of water on an area that is bigger than most Eastern States something is going to happen, and just thank God we have it once in a while or otherwise all we would have would be rattlesnakes and scorpions.

Now this last question would apply to this one. Since its establishment by Executive order in 1970, NOAA has been recognized and supported by this committee as the lead agency in oceanic and

atmospheric research and services. The administration's past funding request and most recent proposals, however, indicate a trend of curtailing research of NOAA and contracting out a number of its services.

Now again I recognize that you have not been in the job long enough maybe to have formed any opinion, but do you see a future and a role for NOAA either under the Federal Government or under private operation?

Mr. BROWN. NOAA is a part of the Commerce Department, and a very important part. As you know, under the proposal for the establishment of the Department of International Trade and Industry, and to conform with the interests of some of the Senators who were specific supporters of that Department of Trade, there was a concept that the new Department of Trade ought to be a lean and mean operation and, therefore, NOAA in that proposal was spun off into an independent status.

Those activities in which NOAA engages, however, have been consistent with the interests of the Department of Commerce to promote the development of the American economy and specific American businesses. NOAA's role in the Department, therefore, from my standpoint up to this point of my service in the Department, has been a comfortable role.

We have had a good relationship with the various activities of NOAA in the fisheries field and the weather field and the other concerns it has with oceans and sea transportation.

NOAA's budget has been designed over the first 3 years of this administration to address national interest areas with the hope that some of the local interests that had been previously undertaken by NOAA could be picked up and addressed at the level of that community interest.

Carefully, we are in the process of trying to reorganize some of the services of NOAA into a centralized effort. We will shortly open in Seattle a one-stop shopping center for people who are concerned about ocean services, for instance.

So the development of NOAA, its service to its constituency and its service to the national interest will continue to be an emphasis of the Commerce Department as long as NOAA is in our Department. What the Senate and the House may do with the reorganization plan, of course, is within the hands of those two bodies.

If NOAA stays in the Department, we will be comfortable with the administration of NOAA and continue its present role and improve its effectiveness.

Senator GOLDWATER. Bud, I have no other questions. I apologize for no other members of the committee being here this morning, but that is rather standard around here.

I think you are taking on a big challenge and you have indicated that you have done your homework and know what you are talking about. I think the Department of Commerce has a very big role to play not just in what we in this country do but around the world and the proper use, for example, of NOAA and the proper use of Landsat and satellite information could help in changing in an important way some of our ancient concepts about this world.

I think of the country of India. If they would do away with their religious feelings about cattle, they could become a great meat ex-

porting nation. If they would learn how to grow wheat, they could become a great wheat exporting nation. So those are areas where our academic and political knowledge could help the world. If we would use a little bit more of our brains and muscle toward making countries self-sufficient rather than trying to line them up against a common enemy, I think we would produce.

I can only vote for myself, but I will poll the committee and I think sometime in the next 24 hours we could let you know whether you are going to go to work or go back and run a newspaper.

Mr. BROWN. Senator, thank you very much. I appreciate the opportunity to appear before you because, as you know, I have always admired you and your forthrightness. I would be delighted to have seen all the other members of the committee, but perhaps a little less comfortable had I thought they were all here to ask me difficult questions.

Your questions have been perceptive and to the point, and I appreciate that opportunity. I am flattered to be considered by this committee.

Senator GOLDWATER. Well, thank you very much. We will poll the committee, and you have got one vote now. So the meeting will stand adjourned and we will keep you informed.

Mr. BROWN. Thank you, Senator.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF CLARENCE J. BROWN

Address: (Legal address) 430 Scioto Street, Urbana, OH 43078. (Phone) 513/653-5555. (D.C. residence mailing address) 3208 Cleveland Avenue, N.W., Washington, D.C. 20008. (Phone) 202/965-2116.

Date and place of birth: June 18, 1927, Columbus, OH.

Marital status: Married to Joyce Helen Eldridge, June 11, 1955, Franklin, OH.

Names and ages of children:

Elizabeth Ellen Brown, January 15, 1957, deceased.

Clarence J. Brown III, January 5, 1959, 1437 N. Alta Vista Blvd., Los Angeles, CA 90046.

Catherine Helen McK. Brown, February 19, 1965, Student, Northwestern University., Evanston, IL.

Roy Eldridge Brown, October 27, 1967, living at home.

Education:

Graduate School of Business, Harvard University, Soldiers Field, Boston, MA, from 1947 to 1949 Masters/Business Administration.

Duke University, Durham, North Carolina, from 1944 to 1947, A.B. Economics.

Western High School, Washington, D.C., from 1942 to 1944, Diploma.

Gordon Junior High School, Washington, D.C., from 1939 to 1942, Diploma.

Employment record: See Attachment A (retained in committee files).

Government Experience:

September 17, 1981–June 10, 1982, successful candidate for Republican nomination for Governor of Ohio.

June 10, 1982–November 2, 1982, unsuccessful Republican candidate for Governor of Ohio.

November 2, 1965–January 3, 1983, Member of U.S. House of Representatives, serving Seventh Ohio Congressional District, including the following assignments:

June 1969–January 1983: Joint Economic Committee; 1975–83, ranking House Republican (ranking committee Republican, 1975–77, 1979–81). Served on a variety of subcommittees.

January 1967–January 1983: House Interstate and Foreign Commerce Committee (now Energy and Commerce Committee); 1967–69, 1981–83, Health and Environment Subcommittee; 1967–74, Communications and Power Subcommittee; 1973–75, ranking Republican; 1975–81, Energy and Power Subcommittee, ranking Republican; 1981–83, Fossil and Synthetic Fuels Subcommittee, ranking Republican.

January 1966–January 1983: House Government Operations Committee; 1966–69, Organization Subcommittee; 1967–83, Intergovernmental Relations Subcommittee;

1973-75, 1977-79, 1981-83, Consumer and Monetary Affairs Subcommittee and others. See Attachment B (retained in committee files). 1973-83: House Republican member of Advisory Commission on Intergovernmental Relations.

June 1969: Observer, Paris Air Show.

June 1971: Delegate, International Telecommunications Union.

January 1972: Participant in Canada/U.S. Interparliamentary Discussions. June, observer to Zaire Constitutional Conference.

July 1973: Delegate to Mexico/U.S. Interparliamentary Conference.

January 1975: Participant, Ditchley (England) Conference.

April 1976; Delegate, Polish/American Trade Conference.

November 1977: Participant in Georgetown Center for Strategic and International Studies Conference with Japanese Diet Members on Law of the Sea Negotiations.

January 1978: Participant in Canada/U.S. Interparliamentary Conference.

June 1978: Congressional Advisor to Strategic Arms Limitation Conference.

April 1979: Delegate to International Parliamentary Union at Prague.

January 1980: Member of Joint Economic Committee, U.S./Asian Trade Study Mission.

April 1980: Participant in U.S./German Conrad Adenauer Foundation Conference on Economics, Energy and Security.

February 1981: Speaker to International Management and Development Institute European Conference on Trade and Investment.

May 1981: Participant in Georgetown Center for Strategic and International Studies European Conference on Trade, Economics, Politics and Security.

February 1982: Participant in International Management and Development Institute European Conference on Trade and Investments.

Member, Presidential Advisory Committee on Federalism, 1981.

Member, Export Task Force, 1981.

Member, Task Force on Energy and Environment, House Republican Research Committee, 1979.

Chairman, Energy Task Force, House Republican Policy Committee, 1978.

Congressional Advisor, National Commission on Employment and Unemployment Statistics, 1978-79.

Member, Task Force on Election Reform, House Republican Research Committee, 1973.

Congressional Advisor, Interagency Task Force on Preparation for the United Nations Conference on New and Renewable Sources of Energy, 1980-81.

Member, National Republican Congressional Committee, since 1977.

Regional House Republican Whip, 1973-74.

Member, Ohio Planning Council. National Museum of Afro-American History and Culture, since 1978.

Honorary Chairman, Group for the Renewal of Ohio (GRO-PAC), 1981.

Political Affiliations and Activities:

Registered Republican, Champaign County, Ohio.

Member, Champaign County, Ohio, Republican Executive Committee since 1963.

Elected delegate to Republican National Convention in 1972 (Nixon) and 1976. (Ford).

Honorary Trustee, Fund for a Representative Congress, Council of 100, an organization of Black Republicans.

Member, Advisory Council on Natural Resources, Republican National Committee, since 1977.

Chairman, Subcommittee on Regulatory Reform.

Member, House-Senate Liaison Committee, National Black Republican Council, since 1978.

Frequent Speaker for Republican Candidates and causes.

Honorary Degree, Miami University of Ohio, 1981.

Senior Fellow of the American Enterprise Institute for Public Policy Research from April 1983 until July 7, 1983.

Distinguished Service Award for 1983 of National Energy Resources Organization.

Recipient, "Guardian of Small Business" Award, National Federation of Independent Business, biennially since 1972.

Recipient, Aerospace Power Award, Ohio Air Force Association, 1971.

Recipient, Special Recognition Award, National Security Voting Index, American Security Council, 1978.

Recipient, "Distinguished Eagle Scout" Award, National Boy Scouts of America, 1976.

Honorary Chairperson, National Urban Coalition Conference, 1978.

Recipient, "Watchdog of the Treasury" Award, National Associated Businessmen, biennially since 1966.

Member, Advisory Board, Georgetown University, Center for Strate ic and International Studies, since 1978.

Member, Advisory Council, American Enterprise Institute, Center for the Study of Government Regulation, 1978–83.

Member, Washington Policy Council, International Management and Development Institute, in affiliation with the Johns Hopkins School of Advanced International Studies, George Washington University and the Fund for Multinational Management Education, 1978–83.

Member, Fowler-McCraken Commission on "Improving Government-Business Cooperation in the Conduct of U.S. Internaticnal Economic Policy," sponsored by the International Management and Development Institute, 1980–83.

Member, Congresssional Advisory Committee, National Tax Limitation Committee, 1978–83.

Member, Advisory Council, National Energy Resources Organization, 1978–83.

[Whereupon, at 9:25 o'clock a.m., the committee adjourned, to reconvene upon the call of the Chair.]

NOMINATION—FEDERAL TRADE COMMISSION

WEDNESDAY, OCTOBER 5, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 10:03 a.m., in room SR-232A, Russell Senate Office Building, Hon. Robert W. Kasten, Jr., presiding.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. The committee will come to order.

Ladies and gentlemen, welcome to the Senate Commerce Committee's hearing on the nomination of Terry Calvani to be a member of the Federal Trade Commission. Professor Calvani would replace David Clanton, whose term is expiring.

Terry Calvani is a graduate of Cornell University Law School. After a brief time in private practice, he began his academic career, teaching law at Vanderbilt and the University of Virginia. Professor Calvani is a well-known authority on antitrust law and I notice from his résumé that he has done a great deal of writing in that area as well.

I am afraid we are going to be interrupted this morning, but if we are lucky we will be able to proceed quickly. At 10:30 Senators have been asked to join a joint session of Congress to receive the President of the Federal Republic of Germany. Our plan is to get as far as we can by 10:30 and then, if necessary, recess for President Kohl's address and then reconvene the hearing at a later time, probably around 11:30 or 11:45.

We are very fortunate and lucky to have Senator Denton with us this morning and I understand Senator Denton, along with Senator Heflin, would like to introduce Professor Calvani, so I would like to ask, Terry, if you and Senator Denton would like to come forward. And then, following a brief statement from Senator Denton I would ask Senator Heflin to make a brief statement, and then we will proceed with the hearing.

Senator Denton.

STATEMENT OF HON. JEREMIAH DENTON, U.S. SENATOR FROM ALABAMA

Senator DENTON. Thank you very much, Mr. Chairman. It is a privilege to be here with my senior colleague from Alabama to join in introducing Mr. Terry Calvani on my right, who has been nomi-

nated by President Reagan to be a member of the Federal Trade Commission.

Mr. Calvani is exceptionally well qualified to be a member of the FTC. Terry is a man with outstanding professional credentials and a wealth of experience in the field. As you noted, he is prolific as a writer in the field.

He is currently a professor of law at Vanderbilt University in Nashville, Tenn., and has previously taught law at both the University of Virginia School of Law and Stanford University Law School. Terry is also presently counsel in antitrust matters to the very prestigious law firm of North, Haskell, Slaughter, Young & Lewis in Birmingham, Ala., and has been associated with other fine law firms in his career with which Senator Heflin is very familiar.

As I am sure the members of the committee are aware, Terry has a vast amount of experience in the antitrust and regulatory fields. He is currently chairman of the Robinson-Patman Committee of the antitrust section of the American Bar Association and the past chairman of both the Special Committee on Antitrust Penalties and Damages and the Price Discrimination Subcommittee of the ABA.

Terry has previously been a chairman of the law and economics section and the vice chairman of the antitrust section of the American Association of Law Schools. He is a member of the advisory board of the Antitrust Bulletin, a delegate to the Sixth Circuit Judicial Conference, and a member of the American Management Association.

He is a well respected member of his profession and a specialist in the area. He has not only written numerous articles, but also participated in many conferences in the antitrust and regulatory fields. He will bring to the Commission the perspective of both teacher and practitioner in antitrust and Government regulations.

I have known Terry only for a brief period of time. I am, however, a friend and admirer of his father-in-law and his family, which includes Terry's wife, Judy, who is here with the two children.

I commend Terry Calvani to this committee and to the Senate for this most important position with enthusiasm and without reservation. Thank you very much.

Senator KASTEN. Senator, we thank you for your participation in the hearing this morning and also for your strong endorsement.

The Senator from Alabama, Senator Heflin.

Senator HEFLIN. In order that I might hopefully finish this hearing by 10:30 when the President of West Germany speaks and not have to come back, I will concur in the remarks of Senator Denton and say that from all reports that I have concerning Mr. Calvani—lawyers and professors—he is an outstanding law teacher and is a superb leading scholar.

I think from all reports he will do a fine job.

Senator KASTEN. Senator, we thank you.

Senators Baker and Sasser, the Senators from Tennessee, also wanted to be here this morning but conflicting schedules intervened. Both Senators have submitted statements of support and I would ask that these statements be submitted at this time in the record.

[The statements follow:]

STATEMENT OF HON. HOWARD H. BAKER, JR., U.S. SENATOR FROM TENNESSEE

Mr. Chairman: I appreciate the Commerce Committee's indulgence in allowing me to submit these remarks in abstenia in behalf of Mr. Terry Calvani's nomination by President Reagan to serve on the Federal Trade Commission. I further regret that previously scheduled commitments have precluded me from joining you this morning and personally presenting Mr. Calvani to the Committee. I would very much have liked to have done that and to have joined with the Committee and Mr. Calvani in a discussion of the role of the FTC in the complex and interlocking relationship between the private and public sectors. I have never had the opportunity to meet Mr. Calvani and discuss these matters with him. I hope and intend to do just that very soon. But I can say, Mr. Chairman, that since the announcement of the President's nomination of Terry, I have received a long and steady procession of commendations and congratulations from mutual friends and business and academic leaders of my state—each and every one advising me that the President had indeed chosen well.

Mr. Calvani has, for the past 9 years, served with great distinction on the faculty of the law school of one of the most prestigious and respected seats of higher education in our land, Vanderbilt University. As a graduate of the law school of the University of Tennessee, I am accustomed to referring to Vanderbilt as "that other school," but it is nevertheless a very fine and outstanding "other school."

A graduate of the University of New Mexico and Cornell University's Law School, Mr. Calvani has also taught at Stanford University and the University of Virginia. Most appropriately, he has served as the chairman of several anti-trust related committees of the American Bar Association in addition to having been in private law practice. He has been universally applauded by those in my state who know him and as we say in Tennessee, that's good enough for me.

Mr. Chairman, I strongly commend for consideration Mr. Terry Calvani.

STATEMENT OF HON. JIM SASSER, U.S. SENATOR FROM TENNESSEE

Mr. Chairman, I am pleased to take this opportunity to urge the Senate Commerce Committee to approve the nomination of Terry Calvani as a commissioner of the Federal Trade Commission.

Mr. Calvani is a distinguished professor of law at my alma mater, Vanderbilt University School of Law in Nashville, Tennessee. He has written and practiced extensively in the field of anti-trust law.

After taking his law degree from the Cornell Law School, Professor Calvani spent a year as a teaching fellow at Stanford University School of Law before joining the San Francisco firm of Pillsbury, Madison & Sutro. Since 1974, he has been on the faculty of the Vanderbilt University School of Law.

While at Vanderbilt, Professor Calvani has been active in the American Bar Association and has served on several of their national committees in the anti-trust field including chairing the Robinson-Patnam Committee, and the Price Discrimination Committee. He is also a consultant to the Antitrust Section of the Tennessee State Attorney General's Office.

Mr. Chairman, the Federal Trade Commission is one that is important to American Business and the American consumer. Its goal of insuring competition in the marketplace is essential to the workings of a sound, free enterprise system.

I believe tht Professor Calvani will bring to the Federal Trade Commission the broad experience necessary to handle the wide-ranging issues which the Commission is called upon to decide. He has experience in the practice of the law. He has taught for many years at a distinquished law school. He has been active in the bar's development and interpretation of the law. I am confident that he will serve with distinction on the Federal Trade Commission and I urge the Committee's speedy confirmation of his nomination.

Senator KASTEN. I would also take a moment at this point to insert two other letters of support in the record. One is from Richard W. Pogue, the chairman of the antitrust section of the American Bar Association, and one is from Joe B. Wyatt, the chancellor of Vanderbilt University.

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I would ask that those two statements also be inserted in the record.

[The letters follows:]

AMERICAN BAR ASSOCIATION,
September 23, 1983.

Hon. BOB PACKWOOD,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: I am writing in my capacity as Chairman of the Section of Antitrust Law, American Bar Association, with regard to the nomination of Terry Calvani to be a member of the Federal Trade Commission.

Professor Calvani has been active in the Antitrust Section for many years and currently serves as Chairman of one of the important substantive Committees of the Section (the Robinson-Patman Act Committee). Based on this substantial experience with his background and his work, I can assure you that he is extremely well qualified for the position of Commissioner, and he would add stature to the Federal Trade Commission. He is thoroughly knowledgeable about the antitrust and trade regulation fields, writes and speaks clearly and well and has always been conscientious and diligent in his volunteer work for the Section.

I think that the country is very fortunate that a person with Professor Calvani's qualifications is available for this position, and I urge you to do whatever you can to expedite the confirmation process.

I would be happy to provide any additional information on this subject should you desire it.

Sincerely yours,

RICHARD W. POGUE, *Chairman.*

VANDERBILT UNIVERSITY,
Nashville, Tenn., September 27, 1983.

Hon. BOB PACKWOOD,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: I am pleased to endorse, on behalf of Vanderbilt University, the nomination of Terry Calvani to a seat on the Federal Trade Commission. Terry has been an active and productive member of the faculty at the Vanderbilt Law School. He has also contributed substantially to the larger community of scholarship and public policy. I expect that Professor Calvani is in a unique position to contribute importantly on issues of major economic significance to the future of America as a member of the Federal Trade Commission.

Sincerely yours,

JOE B. WYATT.

Senator KASTEN. We are pleased to have you with us, Terry, this morning. Senator Denton, thank you very much for joining us.

Senator DENTON. Thank you.

Senator KASTEN. If you, Terry, have a brief statement and also the committee would also very much appreciate your introducing your wife and family to us.

STATEMENT OF TERRY CALVANI

Mr. CALVANI. Thank you, Mr. Chairman.

I would like to take this opportunity to thank both Senators Heflin and Denton for their gracious introductions. At this time I would like to introduce my family to the members of the committee—my wife, Judy Thompson, and my two sons, Dominic Calvani, the blond-haired boy, and the dark-haired kid is Howard Calvani. I am very happy that they could be here to join me today.

Mr. Chairman and members of the committee, I have a very short prepared statement. I am delighted to have this opportunity

to meet with you this morning and to answer your questions concerning my nomination to the Federal Trade Commission.

I am obviously honored by the confidence that the President has placed in me by nominating me for this position. Like many, if not most, citizens I have looked forward to an opportunity for public service. Given my background as an antitrust lawyer, a professor of law and my related activities with the American Bar Association and similar groups, the position of Commissioner would provide me a rather unique opportunity to make some contribution of public service.

For the past 93 years the Federal antitrust laws have regulated business conduct for the purpose of enhancing the consumer welfare of this country. These laws, together with the subsequent consumer protection legislation, are in large part enforced by the Federal Trade Commission. Should you and your colleagues see fit to confirm my nomination, I pledge to vigorously pursue the enforcement of those laws.

At this time I look forward to answering any questions that members of the committee might care to proffer to me.

Senator KASTEN. Mr. Calvani, have you had any discussions with Chairman Miller or any other member of the Commission about any matters pending before the Federal Trade Commission?

Mr. CALVANI. No, Mr. Chairman, I have not.

Senator KASTEN. Have you any views on the proposed joint venture between General Motors and Toyota which the Commission is currently considering under the Hart-Scott-Rodino Act?

Mr. CALVANI. No, Mr. Chairman. I have formulated no conclusions whatsoever with regard to the wisdom of that proposed joint venture.

Senator KASTEN. The Commission is close to promulgating the credit practices rule. If no decision on the rule is reached prior to your confirmation, will you expect final action to be delayed so that you may participate?

Mr. CALVANI. I would not expect that would happen, no, sir. Let me add that the only thing I know about the proposed rule is what I read in the newspapers. Obviously I am not a party to nonpublic discussions within the Federal Trade Commission, like any other citizen.

I gather from my reading that five Commissioners have unanimously voted to issue that rule and I also gather that it is likely to be issued sometime in the very near future. Given the fact that there are five Commissioners who have voted unanimously in support of it, I would not expect to participate in a rulemaking process that has been going on for some years if I were, perchance, to be confirmed 2 days before the issuance of the rule.

So my answer to the question is no, Senator, I would not anticipate that it would handicap the issuance of the rule in any way.

Senator KASTEN. Senator Heflin.

Senator HEFLIN. In the Federal Trade Commission there always arises the issue of Federal regulation versus the issue of State regulation, and I suppose I am a believer in States rights, one of the few that is left. But I prefer and I realize there are certain things as we move along in technology and interstate matters that do involve Federal matters.

But do you have any overall general feeling relative to whether or not there should be restraint by the Federal Trade Commission on entering into matters which have been historically State matters that should be regulated on a State basis?

Mr. CALVANI. Senator, I have a distinct preference for local regulation whenever that is possible and am in favor of Federal intervention only when that is the most efficient way of protecting the interests of the American citizen.

I guess I would bring to service on the Commission a healthy skepticism for regulation but an appreciation that it is appropriate in many circumstances of modern life.

Senator HEFLIN. There have been in the past some in the Federal Trade Commission in some areas where there has been a prohibition against the Federal invasion, for example, in insurance. But the Federal Trade Commission has gotten off in the past into studies relative to the insurance industry.

I think we took some action about 3 or 4 years ago to restrain even those studies because it is the declared intention of the McCarran-Ferguson Act on the issue of insurance that that is still a State function and should be regulated at the State function level.

Do you have any feeling that that is a wrong policy or that the McCarran-Ferguson Act is wrong or anything of the sort?

Mr. CALVANI. Senator, I have, to be quite frank, not studied the legislation that was in the Congress several years ago with reference to the studies of the Federal Trade Commission on the insurance industry, nor have I examined any of those studies, so I really do not have fixed views.

I guess it is always difficult to oppose the study of something. On the other hand, it is obviously a judgment call as to whether the taxpayer's dollar is being well spent on a particular study. Again, I am afraid I cannot provide any more detailed answer because I really am not familiar with the studies that have been done on insurance.

Senator HEFLIN. Thank you.

Senator KASTEN. Thank you, Senator.

I am told that Senator Lautenberg has some questions which he will submit to you today, and the committee would ask that you get back with answers to those questions as quickly as possible. There may be other members of the committee who have questions and we will submit those questions to you also and you can get back to us with answers as quickly as possible.

Mr. CALVANI. I will be happy to respond with answers to any further questions that the committee may have.

Senator HEFLIN. Is there a time for submission of those written questions?

Senator KASTEN. From what I know, we are going to try to get all the questions to you within the next 24 hours. I am told Senator Lautenberg has questions we can provide to you today. He is unable to be here, and in the interest of time, because we do have this joint session, the committee might also ask you to respond to submitted questions.

But I am optimistic we will move quickly. This committee will confirm you as quickly as possible. Thank you very much for your

participation in the hearing today and I wish you well as a member of the Federal Trade Commission.

Mr. CALVANI. Thank you, Mr. Chairman.

Senator KASTEN. The hearing is adjourned.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF TERRY CALVANI

Address: Nashville residence: 4400 Estes Road, Nashville, Tennessee 37215; Nashville office: Vanderbilt School of Law, Nashville, Tennessee 37240; Birmingham residence: 307 Carnoustie North, Shoal Creek, Alabama 35094; Birmingham office: North, Haskell, Slaughter, Young & Lewis, 800 First National-Southern Natural Gas Building, Birmingham, Alabama 35203.

Date and place of birth: January 29, 1947. Carlsbad, New Mexico.

Marital status: Married to Judith Thompson.

Names and ages of children: Dominic Mario Calvani, age 10; Torello Howard Calvani, age 8.

Education:

The Cornell Law School, September 1969–June 1972, Doctor of Law with Distinction awarded June 1972.

University of New Mexico, September 1965–August 1969, Bachelor of Arts awarded January 1970.

Employment record:

Teaching Fellow, Stanford University School of Law, Stanford, California, August 1972–April 1973.

Associate, Pillsbury, Madison & Sutro, San Francisco, California, April 1973–August 1974.

Professor of Law (since 1980), Associate Professor of Law (1977–1980), Assistant of Law (1974–1977), Vanderbilt University School of Law, Nashville, Tennessee.

Visiting Professor of Law, University of Virginia School of Law, Charlottesville, Virginia, August 1981–April 1982.

Of council, North, Haskell, Slaughter, Young & Lewis, Birmingham, Alabama since 1980.

Government experience: Consultant, Antitrust Section, Tennessee State Attorney General's Office.

Memberships:

Professional:

Member, American Law Institute; member, Advisory Board, Antitrust Bulletin; member, Advisory Board, Journal of Reprints for Antitrust Law and Economics; member, Antitrust Section, American Bar Association, Chairman, Special Committee on Antitrust Penalties and Damages: 1979–1982; Chairman, Robinson Patman Committee: 1981–present; Chairman, Price Discrimination Subcommittee: 1978–1981.

Member, Corporation, Banking and Business Law Section, American Bar Association; member, Newcomen Society in North America; member, American Association of Law Schools, Chairman, Law and Economic Section: 1980–1981; Vice Chairman, Antitrust Section: 1981–1982, American Management Association.

Civic:

Member, Board of Directors, Nashville Symphony Association, Inc.; member, Committee of Visitors, Vanderbilt University Medical Center; member, Economic Development Committee, Nashville Chamber of Commerce.

Charitable:

Member, Raleigh Tavern Society of Colonial Williamsburg Foundation; life member, Canby Robinson Society (Vanderbilt University Medical Center); Secretary Treasurer, Mary and Torello Howard Calvani Foundation, Inc.

Social:

University Club of Nashville Vice President (1977–1978), Director (1975–1979); Cumberland Club of Nashville; Richland Country Club; the Club of Birmingham; the Jefferson Club.

Political affiliations: Member, Tennessee Republican Party.

Honors and awards: Henry A. Mark Memorial Scholarship (Cornell Law School); Order of the Coif.

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question 1. What do you perceive to be the major shortcomings, if any, of the Federal Trade Commission today? Please be specific.

Answer. The Federal Trade Commission, in both its antitrust and consumer protection roles, is charged with the responsibility of enforcing statutes with very broad language subject to a multiplicity of interpretations. Congress has invested the Commission with broad and far-reaching powers. Great care must be taken that this responsibility is not abused such that legislative powers properly belonging to the Congress are not assumed. The Commission ought to devote attention to the question of whether there are mechanisms by which it can provide citizens with better notice (perhaps through protocols or guidelines) as to conduct which, in the Commission's view, poses substantial probability of constituting unfair competition and deceptive trade practices. I do not believe that has been accomplished to date.

Question 2. What areas of present FTC activity do you believe should be given the highest priority? Please specify the reasons for your choice.

Answer. Efforts to ferret out and prosecute cartel activity ought to be given the highest priority. Horizontal merger activity also should receive special attention. Emphasis ought also be placed on advising organs of federal, state and local government with reference to legislation and administative regulation which poses an anticompetitive impact. In this sense, the Commission could play an increased pro-competition advocacy role.

Also, emphasis should be placed on "boilerplate" consumer protection: keeping the marketplace free from fraudulent acts and practices and prosecuting firms that systematically breach their contracts.

Finally, the large number of consent decrees and other orders which have been entered in years past and which bind parties ought to be investigated to determine whether there is a continued reason that justifies their existence years afterwards.

Question 3. Are there particular FTC activities that you believe should be redicrected or discontinued? Please specify.

Answer. I do not believe there are particular Commission activities that should be redirected or discontinued. (I am, of course, unaware of nonpublic matters currently before the Commission and cannot therefore comment on them.)

Question 4. Are there any areas in which you think the Federal Trade Commission Act should be amended in order to enhance the FTC's ability to enforce its mandate? If so, what are those areas and what changes do you recommend? Are there any areas that should be cut back, transferred, or redefined?

Answer. I cannot at this time recommend amendments to the Federal Trade Commission Act that would increase the Commission's powers. I do believe, however, that Congress ought consider whether it is appropriate to give further definition to the statutory offenses within the Commission's jurisdiction, e.g., unfair trade practices.

The Commission itself ought consider whether the Commission should promulgate additional guidelines that would provide citizens some greater assistance in identifying conduct and trade practices likely to be found injurious to competition or otherwise unfair.

Question 5. Critics have sometimes asserted that there is no need for two antitrust agencies—the Federal Trade Commission and the Justice Department. What is your view?

Answer. I believe the duty of a Commissioner is to enforce the laws under the schemes devised by Congress; and, if confirmed, I shall vigorously pursue the antitrust enforcement mandate of the FTC.

Nevertheless, the question of whether two federal agencies should share enforcement responsibility for the federal antitrust laws is one which the Congress may wish to study. On the one hand, dual enforcement necessarily involves some duplication of resources at a cost to American citizens. There is also the danger of inconsistent public policies, e.g., two differing sets of merger guidelines. On the other hand, it may be that each agency has established special expertise with reference to certain types of antitrust conduct and that dual enforcement merely represents this specialization. Perhaps, too, some competition between the two agencies is beneficial. The question is ultimately one for Congress; I urge that it be studied.

Question 6. What areas of the FTC's antitrust enforcement authority would you emphasize and which would you deemphasize? Why? In your answer please specifically address enforcement in the areas of:

(*a*) Conglomerate and vertical mergers;

(*b*) Vertical non-price restrictions;

(*c*) Resale price maintenance;

(*d*) Predatory pricing; and
(*e*) Price discrimination.

Answer. In general, I firmly believe that the Commission must enforce laws which Congress by statute has charged it to enforce, even if individual Commissioners might disagree with the underlying merit of the statute. Given finite resources, Commissioners must use discretion in the selection of particular cases in order to maximize consumer welfare. With reference to your particular questions:

(*a*) I would not emphasize the Commission's focus on conglomerate and vertical mergers beyond that which exists at the present time. Given the finite resources available to the Commission, the public is better served by focusing enforcement attention on horizontal mergers. That is not to say, however, that the Commission ought not prosecute conglomerate and vertical mergers in appropriate cases.

(*b*) I cannot generalize about vertical non-price restrictions. The phenomenon is complex and cases ought be evaluated on an individual basis. I am concerned about vertical non-price restrictions when such restrictions are initiated at the behest of a buyer cartel. Likewise, such restrictions, when imposed by a seller facing little or minimal competition, may also warrant increased emphasis.

(*c*) As with vertical non-price restrictions, cases must be evaluated on an individual basis. I would emphasize enforcement attention where, because of the competitive nature of the market, resale price maintenance has the greatest impact on consumer prices.

(*d*) The possibility of confusing predation with vigorous competition is sufficiently high that great care must be taken in the selection of such cases. Moreover, the evidence seems to suggest that cases where predation can be established are sufficiently rare that substantial enforcement resources might be more properly directed at conduct which occurs far more frequently and which is clearly injurious to consumer welfare, e.g., horizontal price fixing. Nonetheless, I would support enforcement action in appropriate cases where evidence of predation exists.

(*e*) The Commission is charged with the principal public responsibility of enforcing the Robinson-Patman Act. I understand from public addresses that the Commission has several such investigations currently underway. I support a continuation of Commission law enforcement in this area.

Question 7. What authority should the FTC have over state-regulated professionals?

Answer. The Commission ought to have authority over state-regulated professionals to the same extent that it does over other business entities. Care must be taken, however, that legitimate areas of state regulations, e.g., professional competence and standards of practice, are not improperly infringed.

Question 8. What statutory or non-statutory changes would you suggest in the FTC's authority to prohibit deceptive advertising?

Answer. I commend the Committee for its recent examination of this complex issue. In general, I believe it is important for Congress to more clearly define the Commission's mandate and discretion. However, I have not yet formed an opinion about or preference for any of the various means of defining or clarifying the Commission's authority over deceptive advertising.

Question 9. Do you believe the FTC's program in the area of advertising substantiation has been effective? What changes, if any, do you believe should be made in such a program?

Answer. I understand that the Commission is presently studying this issue and has sought public comment. If I am confirmed, I will wish to extensively study these comments before making any judgments.

Question 10. Do you have any views as to how corrective advertising might be used more effectively in cases where false and misleading advertisements have been presented to the public?

Answer. My views with reference to corrective advertising are not sufficiently well developed at this time. If confirmed, I would need to learn a good deal more about the Commission's authority, history of regulation, and proposed regulations before venturing an opinion.

Questions of the Minority and the Answers Thereto

Question 1: Do you believe that a more competitive market structure is always beneficial to the consumer? If not, would you please provide the Committee with specific examples of industries in which oligopolistic or monopolistic structure, due to economies in scale or for other reasons, have provided benefits to the consumer in terms of price and increased quality that should allow such structure to continue

without antitrust action from the Federal Trade Commission or the Justice Department?

Answer. Yes.

Question 2: What are your views in regard to the Robinson-Patman Act? Do you believe Robinson-Patman enforcement could be made more effective or should it be repealed or amended? If so, please explain. Please cite the most recent material you have written on the Robinson-Patman Act.

Answer. Having served as Chairman of the American Bar Association's Robinson-Patman Committee and as Chairman of its Price Discrimination Subcommittee and having taught specialized courses on the Act, I am aware of the numerous issues that surround the Robinson-Patman Act. I would recommend that careful attention be directed to the competitive injury requirements in price discrimination cases.

The Commission must enforce the laws within its domain, even if individual Commissioners might disagree with the underlying merit of the legislation. Naturally I would vigorously pursue this antitrust enforcement mandate. Should I subsequently formulate proposals for amendment, I would communicate those to members of this Committee and its staff.

My most recent publication on the Robinson-Patman Act is "Introduction: Predatory Pricing Under the Robinson-Patman & Sherman Acts" 51 Antitrust L. J. 375 (1982) (with Lynch).

Question 3: How do you intend to avoid improper ex parte communications?

Answer. I am very sensitive to the important need to avoid improper ex parte communication and would seek to avoid even the appearance of impropriety. I should note that as a public offical it is important that members of the public have access to Commissioners. I would, in addition to following the Commission's rules in this regard, seek the expert advice of the Commission's General Counsel.

Question 4: What is your view as to how the Commission has used its authority under the "unfairness" doctrine with respect to unfair or deceptive acts or practices and unfair methods of competition?

Answer. I believe the use of the unfairness doctrine could be better employed with additional statutory definition in the area of unfair or deceptive acts. In this context, Congress has invested the Commission with broad and far reaching powers. Great care must be taken that this responsibility is not abused such that legislative powers properly belonging to the Congress are not assumed. I do not think that same problem exists in the "unfair method of competition" area since it embodies a ninety-three year common law tradition in which the federal courts have created a well developed body of case law.

Question 5: Would you favor or support a proposal to have FTC unfair method of competition cases tried before Federal judges?

Answer. I would not support such a proposal at this time since I am not convinced that the status quo poses any substantial problem.

Question 6: Do you think the "State Action Doctrine" applies to the FTC? (To unfair methods of competition and other cases dealing with unreasonable restraints on trade?)

Answer. Yes.

Question 7: What statutory or non-statutory changes would you suggest in the FTC's authority to prohibit unfair deceptive advertising?

Answer. I commend the Committee for its recent examination of this complex issue. In general, I believe it is important for Congress to more clearly define the Commission's mandate and discretion. However, I have not yet formed an opinion about or preference for any of the various means of defining or clarifying the Commission's authority over deceptive advertising.

Question 8. Are there any areas in which you think the Federal Trade Commission Act should be amended in order to enhance the FTC's ability to enforce its mandate? If so, what are those areas and what changes do you recommend? Are there any areas that should be cut back, transferred, or redefined?

Awswer. I cannot at this time recommend amendments to the Federal Trade Commission Act that would increase the Commission's powers. I do believe, however, that Congress ought consider whether it is appropriate to give further definition to the statutory offenses within the Commission's jurisdiction, e.g., unfair trade practices. The Commission itself ought consider whether the Commission should promulgate additional guidelines that would provide citizens some greater assistance in identifying conduct and trade practices likely to be found injurious to competition or otherwise unfair.

Question 9. Does FTC enforcement of its operative statutes tend to aid, or does it hinder, the marketplace functioning of small business? Is the Commission moving in the right direction in this regard?

Answer. FTC enforcement of its operative statutes should tend to aid the marketplace functioning of small business. Although I am unaware of the current nonpublic enforcement agenda of the Commission, its public pronouncements and enforcement initiatives would seem to indicate that it is moving in the right direction.

Question 10. In early 1981, the Administration advocated abolition of the FTC's antitrust jurisdiction, noting the Justice Department's concurrent authority. The Assistant Attorney General for Antitrust has stated he sees no reason for two antitrust agencies, and Chairman Miller has stated he is neutral on this issue. Do you believe Congress should consider abolition of the FTC's antitrust authority?

Answer. I believe the duty of a Commissioner is to enforce the laws under the schemes devised by Congress; and, if confirmed, I shall vigorously pursue the antitrust enforcement mandate of the FTC.

Nevertheless, the question of whether two federal agencies should share enforcement responsibility for the federal antitrust laws is one which the Congress may wish to study. On the one hand, dual enforcement necessarily involves some duplication of resources at a cost to American citizens. There is also the danger of inconsistent public policies, e.g., two differing sets of merger guidelines. On the other hand, it may be that each agency has established special expertise with reference to certain types of antitrust conduct and that dual enforcement merely represents this specialization. Perhaps, too, some competition between the two agencies is benefical. The question is ultimately one for Congress; I urge that it be studied.

Question 11. Should the FTC submit its proposed and final rules to OMB for substantive pre-publication review to be distinguished from paperwork review?

Answer. I am not convinced that there is a need for substantive pre-publication review of proposed and final rules by OMB. I should note, however, that I have not previously considered this issue. Accordingly, I would want to review the reason suggested for substantive pre-publication review before making any final judgment.

Question 12. Do you believe survey evidence is essential to show injury in rulemakings?

Answer. Survey evidence may be exceedingly valuable to show injury in both adjudicative and rulemaking proceedings. I would, however, hesitate to suggest that it is essential in all proceedings.

Question. 13. Do you believe that the cost and benefits of agency action are susceptible to mathematical quantification to the extent that costs can be weighted exactly against benefits?

Answer. Cost benefit analysis can be quite valuable in the setting of agency priorities. It is always important that the American public receive the highest benefit possible from its tax dollars. I strongly doubt, however, that costs and benefits can be "exactly" measured. That does not mean that such analysis is without value.

Question 14. Do you have any views on the FTC Funeral Rule?

Answer. The FTC Funeral Rule was the subject of extensive rulemaking proceedings. I understand that a very large record was amassed in the course of that rulemaking process. I have not reviewed that record and have not formulated any view as to the Rule.

Question 15. Should the FTC retain authority to include affirmative rules of conduct in trade regulation rules?

Answer. Yes.

Question 16. Do you support the per se rule of violation for resale price maintenance cases, which is currently the law set by the Supreme Court?

Answer. The FTC must enforce all laws within its mandate, even if individual Commissioners might disagree with the underlying merit of the legislation. Accordingly, the Commission should police resale price maintenance under a per se rule as long as that is the law of the land.

I would not favor the Commission bringing a test case.

I am particularly concerned about resale price maintenance where interbrand competition is absent or where resale price maintenance is imposed at the behest of a buyer cartel.

I am aware of a major study of resale price maintenance which is currently underway within the Bureau of Economics of the Federal Trade Commission. I would want the opportunity to review that work before reaching a conclusion as to any legislation in this area.

Question 17. Are there any violations of the antitrust statutes enforced by the Commission that deserve per se treatment?

Answer. There are several causes of action under the federal antitrust laws which the United States Supreme Court has held to constitute per se violations. Most of these fall under the rubric of the Sherman Act. The Commission's enforcement of these causes of action has been brought pursuant to Section 5 of the Federal Trade

Commission Act. It would be bad policy for an antitrust violation, e.g., horizontal price fixing, to be treated as a per se offense under the Sherman Act and under the rule of reason in Section 5 prosecutions. Accordingly all per se offenses under the Sherman Act ought be treated in similar fashion in cases brought pursuant to Section 5 of the Federal Trade Commission Act.

Question 18. On horizontal antitrust enforcement, the FTC transition report stated the Commission should: "Concentrate its resources on these horizontal collusion cases where injury is great and where the market will be slow to respond." Do you agree with that?

Answer. Yes.

Question. 19. Should sizable economic efficiencies be considered as part of the legal analysis of proposed horizontal mergers? As a defense?

Answer. Yes, to both questions.

Question 20. The Supreme Court has recognized violations of the Clayton Act involving vertical mergers. Some economists have criticized this approach to the Clayton Act because it does not acknowledge efficiencies that result from such mergers. What is your position on vertical mergers generally?

Answer. I would not emphasize the Commission's focus on conglomerate and vertical mergers beyond that which exists at the present time. Given the finite resources available to the Commission, the public is better served by focusing enforcement attention on horizontal mergers. That is not to say, however, that the Commission ought not prosecute conglomerate and vertical mergers in appropriate cases.

Question 21. In the June 14, 1982 merger statement the Commission voted to consider the failing company defense only in deciding whether to bring a case. Do you agree?

Answer. I am generally familiar with the arguments made with reference to the availability of the so-called failing company defense. I did not participate in the discussion and analysis preceding the issuance of the Commission's June 14, 1982 merger statement. I am unwilling at this time to state that the defense ought be unavailable at later stages in the proceedings.

Question 22. Do support a clarification that the FTC's jurisdiction does not extend to the professions?

Answer. The Commission ought to have authority over state-regulated professionals to the same extent that as it does over other business entities. Care must be taken, however, that legitimate areas of state regulation, e.g., professional competence and standards of practice, are not improperly infringed.

Question 23. How should the FTC evaluate an ad targeted at all consumers but relevant to a vulnerable group as well?

Answer. A mass advertising presents this issue. Not having an extensive background in the advertising issues of the Commission's consumer protection mandate, I cannot draw on my own experience in responding to this question. I should think, however, that such evaluation would have to be made on an individualized basis and that it would be difficult to generalize from one case to another. The relative size of the vulnerable group, the magnitude of the potential injury, and the cost of regulation would be among the relevant factors.

Question 24. Do you believe that the Commission should abandon rulemaking or are there instances where rulemaking would be appropriate to deal with a clear industry-wide problem? If you believe rulemaking could be appropriate, please define the circumstances where you would favor such an approach.

Answer. I am not prepared to recommend that the Commission abandon its rulemaking authority. Factors relevant in selecting a rulemaking process would include the presence of a substantial problem, its pervasiveness within the industry, the cost that would be imposed on the regulated which are ultimately borne by the public, and the ability of the Commission to adequately enforce its rule.

Question 25. Would you provide the Committee with a list of all matters in which North, Haskell, Slaughter, Young and Lewis has represented any party in a Federal Trade Commission or Department of Justice proceeding for the past five years including matters informally settled? Please include a list of clients represented in such proceedings. Please also provide the same list for such matters in which you were personally involved and a client list as well.

Answer. In responding to this question I assume that the reference to the Department of Justice is to be interpreted to mean the Antitrust Division of that Department such that the firm's representation of taxpayers in tax matters would not be called for.

North, Haskell, Slaughter, Young and Lewis organizes its files by client name. Some, but by no means all, client files are then subdivided by matter, e.g. Doe Corp.—employee benefit plan. The file index is not computerized. Accordingly, there

is no fail-safe method of answering Question 24 other than examining thousands of closed files currently stored in a warehouse, and questioning each attorney employed by the firm during the past five years.

In an effort to be responsive, the firm on Monday, September 26, 1983, polled by memorandum all lawyers currently with the firm with reference to Question 24. I an informed that the firm represented Universal Data Systems, Inc. in its acquisition by Motorola where a Hart-Scott-Rodino premerger notification filing was made with by the Federal Trade Commission and the Antitrust Division. I am informed that neither agency interposed objection to the acquisition. In 1983 the firm, with my participation, represented Hanger One, Inc. in a Hart-Scott-Rodino premerger notification filing with both the Federal Trade Commission and the Antitrust Division involving its acquisition by Raytheon Company. Neither agency interposed objection to the acquisition.

The Hanger One matter is the only matter where I personally represented clients before either agency.

Question 26. Please list any criteria for membership in the social clubs of which you are a member? Currently, are there female or minority members in each of these clubs?

Answer. The University Club of Nashville is a faculty luncheon and social club. It has both minority and female members.

The Jefferson Club is an organization composed of the community leaders of Birmingham, Alabama who meet for dinner to hear speakers discuss issues of public policy. It has both minority and female members.

The Club of Birmingham is a social luncheon dinner club. In response to this question, I was informed that the club does not maintain records organized by race or sex and that the club could not answer my inquiry. I do know, however, that there are female members.

Richland Country Club is a country club. In response to my question, I was informed that the club does not maintain records organized by race or sex and that the club could not answer my inquiry. I do know, however, that there are female members.

The Cumberland Club of Nashville is a luncheon club, I am informed that it does not discriminate on the basis of race, but that there has not been an application for membership filed by a minority applicant. It does not accept female members at this time.

FACULTY OFFICES,
VANDERBILT UNIVERSITY SCHOOL OF LAW,
Nashville, Tenn., October 14, 1983.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR HOLLINGS: In my Supplemental Response to Question from the Minority I had indicated in response to Question # 25 that the Cumberland Club of Nashville does not accept female members. A recent development requires that I again supplement my response to the Minority's Question # 25. On Wednesday, October 12, the membership of the Cumberland Club voted to amend its constitution and bylaws to permit female members. It is anticipated that there will be female members within a very short period of time.

Thank you for your attention to this supplemental response.

Sincerely,

TERRY CALVANI.

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS THERETO

Question 1. What is your view on the per se rule on resale price maintenance?

Answer. Since 1911, when the United States Supreme Court decided the *Dr. Miles* case, conduct sometimes labelled resale price maintenance has been held to constitute a per se violation of the federal antitrust laws. The courts, however, have allowed exceptions to the per se rule, and currently the question of whether a challenged practice is resale price maintenance is often difficult to answer. The Federal Trade Commission must enforce the laws within its mandate, even if individual Commissioners might disagree with the underlying merit of a particular law. Ac-

cordingly, I believe that the Commission should police resale price maintenance under a per se rule as long as that is the law of the land.

Question 2. Would you recommend that the Courts or Congress adopt the rule of reason analysis for RPM cases? How will you exercise your "prosecutorial discretion" when it comes to RPM cases? If staff presents a case of RPM to you, will you support pursuit of that case or will you internally apply a rule of reason analysis in determining whether the Commission should proceed?

Answer. It is difficult from a public policy perspective to generalize about resale price maintenance. Personally, I am particularly bothered by resale price maintenance where interbrand competition is absent or where it is imposed at the behest of a buyer cartel. I am aware of a major study of resale price maintenance currently underway within the Commission's Bureau of Economics and Bureau of Competition. I further understand that that study is nearing completion. I would want an opportunity to review that study and its conclusions before making any recommendation.

I would apply my prosecutorial discretion in all cases, not just those involving resale price maintenance, by devoting resources to those cases that are most likely to enhance the consumer welfare of the American public.

I would think it inappropriate to internally apply, as a matter of law, a rule of reason where the Supreme Court had held the per se rule appropriate.

Question 3. Since Mr. Miller's appointment, the FTC has brought no new resale price maintenance cases. Do you think that means there is more law abiding conduct, or less law enforcement?

Answer. Even if the Commission has brought no new resale price maintenance cases, I cannot adopt either conclusion. I would need to have access to non-public information involving the efforts of enforcement officers to ferret out cases, numbers of complaints made to the Commission, strength of the evidence, etc. to reach a conclusion to this question.

Question 4. Do you think the public statements by Mr. Baxter and Mr. Miller, along with the FTC's enforcement record, send a signal to the business community that resale price maintenance cases are being viewed less critically by law enforcement?

Answer. Such statements probably do signal that resale price maintenance cases are viewed less critically by federal law enforcement. Given the fact that private enforcement, i.e. the treble damage action, has generally constituted over 90 percent of the antitrust cases filed, I am not sure that there has been any decrease in general deterrence.

I might note that my own practice background leads me to conclude that illegal resale price maintenance is not nearly as common as some would believe. Given its per se quality, the inability of participants to hide an announced policy (as in horizontal price-fixing), and the treble damage action, it is not surprising that most businesses are deterred from adopting the policy.

Question 5. Do you think that the proliferation of discounters and vigorous price competition in various consumer goods is a positive development? Discount chains in my state—like Burlington Coat Factory and Toys-R-Us which is now starting Kids-R-Us, for clothing—are reportedly having difficulty in obtaining goods. High-priced stores don't like the competition. Manufacturers are being asked to refuse to sell to the discounters. Without taking a position on a particular case, what is your view of these discounters? Do you believe they should have a source of supply? Do you think they meet a real need of consumers in stretching their hard-earned dollars?

Answer. I strongly favor price competition. Discounters serve a valuable function within our economy. Obviously, they meet a real need of consumers as their proliferation well demonstrates. In general, I also favor the notion that sellers ought have a source of supply.

Question 6. If the Commission has not reached the point of officially promulgating the [credit practices] rule before you arrive at the Commission, will you try to participate in the matter, or will you step aside, given that your participation would necessarily entail more delay?

Answer. I understand from public announcements that the Commission has unanimously adopted the rule and that it will be promulgated in the very near future. Given the lengthy time that has been devoted to this rule and the unanimity of the Commission (which would still constitute four votes after my arrival), I think no useful purpose would be served by my participation. Assuming that the press accounts are accurate, I would elect not to participate in deciding whether the rule should be promulgated. If, at some future time, other issues arise regarding the

credit rule, I would decide at that time whether my participation in resolving those issues would be appropriate.

Question 7. Could you share with us your general views on joint ventures, particularly joint ventures involving industries with few major participants?

What do you think of the increased discussion about joint ventures in research and development? Do you think there needs to be clarification of the antitrust laws, to encourage increased joint activity?

Answer. I believe, consistent with the case law, that joint ventures are to be examined under the rule of reason which requires a balancing of pro- and anti-competitive effects. Naturally, I would be particularly concerned where such ventures involve industries with few major participants.

The current discussion about joint research and development ventures is important and profitable. While clarification of law is always important, I have not as yet formulated any view with reference to specific legislation.

Question 8. The FTC has not brought a single new product defects case in this administration and has substantially cut resources in that program. Are you concerned by that? What are your views on the Commission's defects program generally?

Answer. My expertise is in the antitrust field. I am frankly not well acquainted with this aspect of the Commission's consumer protection mandate. However, I recognize the importance of protecting the public from injury due to product defects where the Commission can be an efficient enforcement agent. As with Question 3 above, I would need access to non-public information, e.g. effort to ferret out violations, complaints made to the Commission, strength of evidence, etc., before I could evaluate current enforcement efforts.

OCTOBER 4, 1983.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your staff inquired today whether there are matters presently pending before the Federal Trade Commission on which I would plan to recuse myself. The only matter, of which I am aware, that would necessitate my recusal is *Russell Stover Candies, Inc.* v. *FTC,* Docket No. 09140. Although I have not represented Russell Stover in any matter, I am a friend of David Everson, who has served as chief defense counsel in the Russell Stover matter. In the course of the past several years, I have talked at length with Mr. Everson about the case, its management and strategy. I also have reviewed and commented on drafts of pleadings and other papers.

The reversal of Commission's decision in *Russell Stover* by the United States Court of Appeals for the Eighth Circuit last week may present the Commission an opportunity to seek review in the United States Supreme Court. Although Russell Stover has not been my client, I think that it would be improper for me to participate in any further Commission proceeding with reference to that matter. Accordingly, I would—if confirmed—plan to recuse myself should the matter arise.

Warmest regards,

Sincerely,

TERRY CALVANI.

[Whereupon, at 10:17 a.m., the committee adjourned, to reconvene upon the call of the Chair.]

NOMINATION—CONSUMER PRODUCT SAFETY COMMISSION

THURSDAY, NOVEMBER 3, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., Hon. Robert Kasten, presiding.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. The committee will come to order.

This morning the Committee on Commerce, Science, and Transportation is pleased to conduct a hearing on the nomination of Mrs. Saundra Brown Armstrong for Commissioner of the Consumer Product Safety Commission. The President has nominated Mrs. Armstrong to fill a 7-year term to commence in November 1983.

Mrs. Armstrong received her undergraduate degree in 1969 from California State University in Fresno. Prior to earning her J.D. degree in 1977 from the University of San Francisco's School of Law, Mrs. Armstrong was employed as a policewoman for the Oakland, Calif. Police Department. Upon graduation from law school, she served as a deputy district attorney for Alameda County in Oakland, Calif.

She then joined the staff of the California State Assembly Committee on Criminal Justice, which was directed to draft, to analyze, and to review all legislation introduced by State legislators affecting the criminal justice system. As a senior consultant to the California legislative committee, Mrs. Armstrong also routinely consulted with numerous State and local agencies and interest groups regarding committee activities.

Mrs. Armstrong returned to Alameda County in 1980 to again serve as a deputy district attorney before joining the U.S. Department of Justice, where she is presently serving as a trial attorney in the Department's Criminal Division.

So we are pleased to conduct this hearing this morning and to welcome you.

Senator Hollings has an opening statement which will be placed in the record.

OPENING STATEMENT BY SENATOR HOLLINGS

Mr. Chairman, this morning we consider the nomination of Saundra Armstrong to the Consumer Product Safety Commission. CPSC authorization bills have passed both the House and Senate. Two major issues are facing the conferees: First, the proper level of funding for the agency; and second, congressional review of agency

rules in light of the recent Supreme Court ruling that the legislative veto is unconstitutional. After the decision, the House attached two different review mechanisms to its CPSC bill—the first proposed by Congressman Levitas would require a resolution of approval passed by both Houses and signed by the President before a regulation could become effective; the second, proposed by Congressman Waxman would provide for a resolution of disapproval passed by both Houses and signed by the President to stop a regulation from taking effect. I am interested in Ms. Armstrong's views on both of these important issues.

I believe in an independent and healthy Consumer Product Safety Commission. I have opposed efforts by the Administration and others to abolish the agency. I have supported a healthy budget and opposed efforts to weaken the agency by reducing its level of funding below that needed to enforce its statutes. I hope to work with Ms. Armstrong to insure that the Commission is able to operate in the public interest to protect the health and safety of all Americans.

Senator KASTEN. I am particularly pleased to welcome my distinguished colleague, Senator Pete Wilson, from the State of California. We are happy to have you with us here this morning, Senator, and understand that you have an introductory statement that you would like to offer on behalf of Mrs. Armstrong.

Senator Wilson.

STATEMENT OF HON. PETE WILSON, U.S. SENATOR FROM CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman. I am delighted today to have the very great personal pleasure and privilege in introducing to you President Reagan's nominee to be the new Commissioner on the Consumer Product Safety Commission, my fellow Californian, Saundra Brown Armstrong.

Mrs. Armstrong, as you have pointed out in your recitation of her very extensive background, is a highly qualified public servant with experience at all levels of government. She will be a valuable, important addition to this Commission, which is charged with the important responsibility of eliminating the unreasonable risks of injury and death from unsafe consumer products in the complex markets of the United States.

Mrs. Armstrong brings a demonstrated ability to work well with Federal, State, and local officials. She brings as well practical experience in law enforcement and working understandings of the legislative and administrative processes. In each of these areas she has worked to build consensus and to facilitate decisions among leaders in industry, consumer groups, and regulators, striving to achieve and maximize the public good.

Saundra Brown Armstrong has developed these aptitudes and abilities through her service as a Federal trial attorney, State legislative consultant, county deputy district attorney, and city police officer. She is an experienced analyst, enforcement agent, and policymaker.

Mr. Chairman, ours is an age of reducing the Federal presence in many spheres. Appointees to influential positions within the Federal Government must be committed to minimizing costs and avoiding detrimental impacts, undue burdens, while promoting public safety and confidence.

Saundra Brown Armstrong is such an individual, and I urge this committee to examine her academic, her professional and her political records, and to report her nomination favorably. I am convinced that when you have made that examination, you will be

well satisfied and will in fact take pleasure in giving a favorable report on her nomination. Saundra Armstrong has my full support. I am confident that she will earn yours as well.

Thank you very much, Mr. Chairman.

Senator KASTEN. Thank you very much, Senator Wilson, and once more thank you for coming. I know it is a hectic day for all of us, and you being here demonstrates the importance with which you view this nomination and all of us appreciate that very, very much.

Senator WILSON. Thank you, sir.

Senator KASTEN. Mrs. Armstrong, do you have an opening statement?

STATEMENT OF SAUNDRA BROWN ARMSTRONG

Mrs. ARMSTRONG. Yes, sir, I do. Thank you, Mr. Chairman.

Preliminarily I would like very much to express my appreciation to Senator Wilson for being here with me this morning and for his generous support for my nomination. It is truly appreciated.

Mr. Chairman, it is indeed a distinct honor and privilege to appear before you today as the nominee of the President of the United States to the Consumer Product Safety Commission. I take this challenge and opportunity very seriously. Should this committee and the Senate of the United States act to confirm my nomination to this important health and safety commission, I pledge my total dedication and fullest efforts to accomplish the congressional directive to the Consumer Product Safety Commission and to fulfill the trust President Reagan, this distinguished committee and the Senate place in me.

I believe that my background as a State and Federal prosecutor and my past experiences as both a policewoman and legislative consultant demonstrate my deep concern for, and firm commitment to, the safety and interests of the public, and have equipped me with the necessary sensitivities and foundation to effectively administer consumer product safety laws. These skills will be of tremendous value in assessing the enormous amount of technical information that the Commission must thoroughly examine before making any decisions in both the areas of mandatory regulation and/or administrative actions.

The Consumer Product Safety Commission is charged with the vital responsibility of protecting the public against unreasonable risks of injury associated with consumer products. In fulfilling this mandate, I would carefully review the facts, weigh all the evidence, sift carefully through any conflicting data, listen to and solicit the points of view of all sides, and apply the law to the facts as I find them. I believe this process is essential to the effective exercise of prosecutorial discretion in all activities undertaken by the Consumer Product Safety Commission, and will equip me to make the difficult decisions required of a Consumer Product Safety Commissioner.

I am cognizant that the regulations and/or administrative actions of the Consumer Product Safety Commission can literally affect life and death for American consumers. At the same time, the Commission has the capacity to cause immediate and irrepara-

ble harm to small businesses, or an entire industry for that matter. This consequence is especially tragic if the damaging regulations are unjustified.

Understanding the nature of the challenge and responsibility to protect the public against unreasonable risks of injury and applying the law to a careful analysis of the facts will enable me to both protect the consumer and provide a fair and adequate insight into the industries the Commission regulates. I believe such an understanding of the regulatory process and its effects on both its intended beneficiaries and those to be regulated is essential.

My own hopes and goals, if confirmed, also come from my legal experiences at the Federal, State, and local levels. Cooperation between State, local, and Federal authorities is an inherent part of effective law enforcement and has been since the very founding of this federal system of ours.

The Consumer Product Safety Commission is one of the smallest independent regulatory agencies, yet it is charged with the enormous task of overseeing literally thousands of consumer products in the vast, complex, and expansive marketplace of this great Nation of ours.

If I am permitted to serve, it is my sincere hope that I can help foster a greater cooperative working relationship between the Commission and the numerous State and local consumer agencies in order to adequately police such a marketplace to prevent the risk of injury from consumer products we are all concerned with at every level of government. Such mutually beneficial cooperation will be one key goal of mine in leveraging this small health and safety agency's limited resources while assisting State and local government efforts for the common good of all our Nation's consumers.

Second, I would hope to foster and further encourage the voluntary standard process in a joint and nonadversarial way to promote Government-industry efforts in providing adequate, cost-effective safety to consumers.

These are days of reduced governmental resources at both the Federal and local levels. We in Government must find and encourage new and creative ways to protect citizens from needless deaths and injuries in a sound, logical, and reasonable way while reducing unnecessary Government involvement.

I would strive to encourage cooperative, responsive, and creative hand-in-hand solutions between Government and industry to address promptly and effectively any danger, threats or doubts that might surround a given product.

In a marketplace the size of this Nation that grows more complex and technologically advanced each day, such cooperative efforts are not only necessary but are essential in the constant struggle to insure that all our products, and especially the newer ones which enter the market every day, are safer for those who purchase them with their hard-earned dollars. If I am permitted to serve, I can assure the members of this committee that my every action shall be with that purpose in mind.

I welcome any questions the committee may have and again, I thank the members for this opportunity to express my views on the

challenge that President Reagan has seen fit to call upon me to meet.

Senator KASTEN. Mrs. Armstrong, thank you very much. We do have a couple of questions.

I would like to also point out that with us this morning, although they will not be testifying, are Nancy Steorts, the Chairman of the Consumer Product Safety Commission, and Commissioners Sam Zagoria and Terry Scanlon. Nancy, we are particularly happy to have you and your Commissioners with us here this morning.

Mrs. Armstrong, would you list for us what you believe to be a few of the priority actions that you hope to accomplish in the next few years at the Commission? In other words, we would like to get a sense of your priorities.

Mrs. ARMSTRONG. My basic priority would be to devote my full attention, energies, and skills to assisting the Commission in fulfilling its mission of protecting the public from unreasonably hazardous products. Beyond that, and because I haven't been on the Commission, it is difficult to definitively state what areas I would target eventually, but there are a number of areas that I am interested in and that I think are important.

One of those is cooperation between State and Federal Governments. The Consumer Product Safety Act requires the Commission to establish a program to promote Federal and State cooperation in administering the provisions of the Consumer Product Safety Act. A major objective of the Consumer Product Safety Act is to develop uniform national safety standards and to reduce the problem of conflicting standards. In this regard the preemption provisions are included in the act.

I intend to evaluate the working relationship that the Commission has established with the State and local authorities with an eye toward developing a mutually beneficial working relationship. I believe that such a relationship will facilitate the Commission's ability to identify in a timely fashion emerging health and safety hazards, as well as to monitor the marketplace and insure that Federal standards are being duly enforced.

Second, I plan to review the current injury information collection system that the Commission is employing in terms of its effectiveness in identifying emerging product hazards. I would like to explore other possible avenues of receiving product-specific information and what improvements, if any, can be made to the current injury information collection system.

Senator KASTEN. As you know, the issue of regulatory review/legislative veto has been of central concern in the Consumer Product Safety Commission reauthorization process and the Federal Trade Commission reauthorization process this year.

When the House reauthorization bill passed, it contained both Congressman Waxman's and Congressman Levitas' proposals regarding this issue of regulatory review. Would you tell us what your attitude is toward congressional regulatory review/legislative veto, and which of these proposals, the proposal of Congressman Levitas or the proposal of Congressman Waxman, do you believe would be most effective in providing congressional oversight of the Consumer Product Safety Commission and other regulatory agencies?

Mrs. ARMSTRONG. Preliminarily I would like to state that I believe that Congress and the Chief Executive, being the elected officials, have a clear and important role in reviewing the regulatory actions in order to insure that delegated powers are exercised in the contemplated fashion.

I also believe, however, that the Consumer Product Safety Commission has a very important mission and must discharge its statutory responsibilities in an expedient and expeditious fashion.

I have read the Levitas proposal and I have also read the Waxman measure. In addition, I have read the Supreme Court's decision in *INS* v. *Chadha*. While I believe that both measures accomplish the objective of addressing the separation of powers concerns that are raised in the *Chadha* decision, as well as affording the congressional involvement in the regulatory review process, I believe that the Waxman measure, which would require congressional response only if there is a disapproval of the action, would allow the agency to retain its current regulatory authorities with less intrusion into its day to day activities.

I believe that the Levitas proposal, by requiring item by item approval of every regulatory action, would essentially transfer the rulemaking authority from the agency to the Congress, leaving open to question the resulting status of the agency, as well as its ability to function credibly and effectively.

With the current emphasis in the agency on voluntary standards, another concern would be the impact the Levitas proposal will have on the incentive of industry to fully cooperate with the voluntary efforts of the Commission, as well as with the Commission's efforts to encourage such voluntary activities.

The Levitas proposal also raises the concern of delay, whether Congress will have the time to legislate in all the areas that are embraced by the regulatory activities of the agency. There being no time deadline for congressional action in the Levitas proposal it would appear that mere inaction by the Congress or a committee of the Congress would, in effect, have the result of killing a safety measure.

There are a number of other concerns with the Levitas measure. Specifically, because the language in the measure would allow the agency to continue promulgating regulations and, ostensibly, allow the regulations to take effect, but would not allow appropriation of funds to place the regulations into effect without the affirmation, the question is raised as to the preemptive force of the rules, as well as possible conflicts with other provisions that are contained in the Consumer Product Safety Act.

I believe the Waxman measure, as I indicated, would allow the agency to go forward with its legitimate agency functions with less disruption. The major concern that I have with the Waxman measure, however, is the prescribed waiting period, providing that there must be 90 days of continuous session before a rule takes effect, absent the joint resolution. I believe that it would be in the interest of all parties involved to have a date specific or a date certain as to when a regulation would take effect.

However, on balance, I believe that the Waxman measure is the less intrusive of the two.

Senator KASTEN. When you say a date certain or a date specific, do you mean a shorter number of days?

Mrs. ARMSTRONG. No. I mean that when you compute the 90 days——

Senator KASTEN. We don't know what day you are going to come out with a ruling, so we can't say on Valentine's Day or on the Fourth of July——

Mrs. ARMSTRONG. A specific period of days. Instead of referring to the continuous session, perhaps a specific 90-day period, or a longer period to allow the Congress to have the amount of time that it desires to have the regulation before Congress but yet have some specific period of time, a specific date——

Senator KASTEN. Without regard to the number of days that Congress is in session. I see what you mean.

Mrs. ARMSTRONG. Yes.

Senator KASTEN. Two months or whatever, no matter what happens during that time.

Mrs. ARMSTRONG. Yes, sir.

Senator KASTEN. I understand. The reason it is done that way of course is that the Congress is theoretically supposed to act, so if we had a 60-day period of time and the Consumer Product Safety Commission came out with a ruling next week, we are about to go out for essentially a month and a half until the middle of January, so those days would be running and it would be very difficult for the Congress to deal with it.

I think you are right, though, because we got into that same kind of problem with the used car rule a couple of times at the Federal Trade Commission because the time was running and then we were going back and forth. There might be a way that we can do that.

In the past, the Consumer Product Safety Commission allowed the exportation of fabrics which do not comply with Federal flammability standards if the product was manufactured expressly for the purpose of exportation. More recently, the Commission has revised that policy in order to permit exporting noncomplying fabrics, regardless of the manufacturer's intent at the time of the production.

Do you have any specific views with regard to this policy?

Mrs. ARMSTRONG. The issue of exportation of products which do not conform to our safety standards is a very complex issue and one that deserves a great deal of thought and work. It is certainly an area that I would want to study extensively at the Commission prior to taking any position on the propriety of exporting these goods.

However, I have read the current export provisions that are found in the Consumer Product Safety Act, the Flammable Fabrics Act and the Federal Hazardous Substance Act. I believe that the 1978 amendments to these provisions is an indication that Congress deemed notification to the recipient countries important, and I concur in that wisdom. I believe that it is important to provide notification of nonconforming products to recipient countries in order to afford the country the opportunity to decide whether to accept such exports.

I am unaware at this point, not having served on the Commission, how the staff has implemented these notification require-

ments and I would want to review the implementation in terms of adequacy of time and the content of the notice.

I am also cognizant of concerns that have been raised that exportation of nonconforming goods would work as a disincentive to quality control by allowing certain manufacturers to recoup their losses. This is an area that I would also like to study extensively, as well as to review and weigh all of the available information and evidence with respect to the exportation of nonconforming goods in order to determine what impact, if any, exporting nonconforming goods will have on the American consumer.

Senator KASTEN. Mrs. Armstrong, we may have some additional questions which we will submit to you in writing. I am also told that the minority, the Democrats on the committee, may have some additional questions which they would like to submit to you in writing.

What we will try to do is to get these questions to you as quickly as possible, and if you could get back to us with answers, I am confident that we can move forward and in fact that you will be confirmed by the Senate.

I am hopeful that that confirmation process, if we can get the questions and answers back and forth, could occur before November 18 when the Congress is scheduled to adjourn.

On behalf of the committee I would like to thank you, congratulate you and wish you well in your new assignment.

Mrs. ARMSTRONG. Thank you very much, Senator Kasten.

Senator KASTEN. The hearing is adjourned.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF SAUNDRA BROWN ARMSTRONG

Address: 5814 Colfax Avenue, Alexandria, Virginia 22311.
Date and place of birth: March 23, 1947, Oakland, California.
Marital status: Married to George Walter Armstrong.
Names and ages of children: Not applicable.
Education:
Peralta Community College, September 1965 to May 1967; A.A. Social Sciences.
California State University, Fresno, September 1967 to June 1969; B.A. Sociology.
University of San Francisco School of Law September 1973 to May 1977; J.D. magna cum laude.
Employment record:
Trial Attorney, U.S. Department of Justice, Criminal Division, 315 9th Street N.W., Washington, D.C.; June 1982 to present.
Deputy District Attorney, Alameda County District Attorney's Office, 600 Washington Street, Oakland, California; September 1980 to April 1982.
Senior Consultant, Assembly Committee on Criminal Justice, California State Legislature, State Capitol, room 5016, Sacramento, California, 1979–80 Legislative Session—January 1979 to September 1980.
Deputy District Attorney, Alameda County District Attorney's Office, 600 Washington, Street, Oakland, California; February 1978 to January 1979.
Judicial Extern (Law Clerk), California Court of Appeals, First Appellate District, 455 Golden Gate Avenue, San Francisco, California, January 1977 to June 1977.
Policewoman, Oakland Police Department, 455 7th Street, Oakland, California, September 1970 to May 1977.
Government experience:
Federal: Trial Attorney, U.S. Department of Justice; June 1982 to present.
State: Senior Consultant, Assembly Committee on Criminal Justice; January 1979 to September 1980.
County: Deputy District Attorney, Alameda County District Attorney's Office; February 1978 to January 1979, September 1980 to April 1982.

City: Policewoman, Oakland Police Department September 1970 to May 1977.

Advisory/consultative experiences:

California Council on Criminal Justice.—State council responsible for overseeing local criminal justice-related programs and projects, and awarding state funds. By law the Chairman of the Assembly Committee on Criminal Justice, the Honorable William McVittie, was a member of the Council. I routinely attended and participated in his stead.

As Senior Consultant to the legislative committee, I was routinely consulted by numerous state and local agencies and groups representing various interests.

As a law enforcement officer, I participated in a variety of local inter-agency advisory groups in connection with various laws. I was also routinely consulted by various hospital and school personnel and county agencies in connection with statutory reporting provisions.

Memberships:

McAuliffe Honor Society, University of San Franscio School of Law;

Phi Alpha Delta Law Fraternity;

National Council of Negro Women;

National Association for the Advancement of Colored People;

California Bar Association;

Charles Houston Bar Association;

California District Attorneys' Association.

Political affiliations and activities: Registered Democrat, State of California.

I provided assistance to the "Black Californians for Reagan-Bush" campaign effort in Northern California in 1980. Activities consisted of assisting with the scheduling and preparation of events sponsored in Northern California.

Honors and awards:

Resolution of Commendation, California State Assembly August 26, 1980;

Outstanding Scholastic Achievement Award for 1977, Phi Alpha Delta Law Fraternity;

Member McAuliffe Honor Society, University of San Francisco School of Law;

Award for Excellent Standard of Scholarship, McAuliffe Honor Society;

Judicial Externship, California Court of Appeals First Appellate District;

Listed in Outstanding Young Women of America 1981–82;

Listed in "Who's Who in Black America", 1982.

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. What do you consider to be the future mission of the Consumer Product Safety Commission? Please define the relationship between this mission and the role of industry in the area of consumer product safety.

Answer. The present and future mission of the Consumer Product Safety Commission is to protect the public against unreasonable risks of injury associated with consumer products. I believe accomplishment of this mission requires shared responsibility, as well as the concerted and cooperative efforts of the CPSC and industry in constantly monitoring the marketplace in order to identify, assess, and promptly address the most serious product hazards which create an unreasonable risk for consumers. Moreover, to the extent economically and technologically feasible, I believe the CPSC and industry should strive for early identification of potential risks and hazards. The ideal is to anticipate problems and prevent death or substantial injury associated with consumer products. I perceive the role of industry in the area of consumer product safety as tantamount to that of a "team player"—an integral component essential to the protection of the consumer and a safe marketing environment. I believe realization of this mission and the overall effectiveness of the CPSC in the discharge of it's statutory responsibilities will be influenced, to a great extent, by industry's cooperative assumption and fulfillment of it's roles in working toward this common goal.

Question. If confirmed, what would be your basic objectives as a member of the Consumer Product Safety Commission?

Answer. If confirmed, my basic objective will be to devote my full attention, energies and skills to assist the Commission in the accomplishment of it's mission, through voluntary industry response, and where necessary, mandatory CPSC action. In addition, I plan to review the current injury information collection system and it's efficacy in accurately and timely identifying product hazards resulting in injury, as well as the current working relationship between the CPSC and state and local authorities.

Question. What criteria have you established for selecting your personal staff at the Commission?

Answer. My staff will consist of persons who posses traits and skills which will maximize my effectiveness, complement the existing CPSC staff, and facilitate a sound working relationship with consumer and industry representatives. I will require individuals who are professional, competent, industrious, diplomatic, possessed of sound judgment and common sense, and who are sensitive and committed to the goals of the Commission. Because a highly technical cost-benefit analysis is an integral factor in the promulgation of any new product safety regulation or voluntary action taken, at least one staff member will, in all likelihood, be accomplished in the field of economics; capable of examining the consumer benefits as well as evaluating the manner in which a particular safety measure—mandatory or voluntary—will economically impact the marketplace and industry.

Question. Do you believe that the issuance of safety standards which would require the development of new technology is an appropriate technique to advance the state of the art of consumer product safety technology?

Answer. The Commission's mandate is to protect the public from unreasonable risk of injury efficiently and effectively. It is not at all clear that the Commission can require the development of new and unknown technology to enhance safety. New technology, for both improved productivity and increased safety, comes from the creativity of entrepreneurs in the private market, faced with the proper incentives. I believe that in many cases, the most effective role by which to pursue consumer safety is to set performance standards that provide the proper margin of protection but permit manufacturers to find the most effective way, by design or new technology, to achieve the desired level of safety. This harnesses the ingenuity of the free market to meet safety standards in the most cost-effective way and, at the same time, provides the flexibility to develop new and better ways, such as technological improvements, to satisfy the safety needs of consumers.

Question. What do you believe to be the successes of the Consumer Product Safety Commission during its existence?

Answer. Since the formation of the Commission in 1973, the CPSC has been demonstrably successful in reducing the number of injuries and deaths associated with consumer products. A good example of this is the statistical evidence of the reduction of household injuries and deaths compiled by the Consumer Federation of America. According to the report, the specific actions of the CPSC over the last five years prevented over 1.25 million injuries and deaths and saved more than $3.5 billion, and since its creation, 5 million deaths and disabling injuries have been prevented and $14 billion saved, in comparison to the nine year period prior to its formation. I believe that other successes of the CPSC since its inception include the administration and monitoring of the Poison Prevention Packaging Act, which has led to a sharp reduction in the incidence of deaths and injuries of young children as a result of ingestion of toxic substances; recent emphasis on elimination of the "adversarial" approach to consumer safety and implemenatation of the "cooperative" effort; and establishment of specific priority objectives.

Question. What do you see as the Commission's most significant shortcomings during its existence? What changes would you favor to overcome these shortcomings?

Answer. I believe that the most significant shortcoming of the Commission has been in the adversarial posture initially taken, because such a posture has a tendency to pervade the entire approach to consumer product safety. The interests, responsibilities and goals of the CPSC, industry and consumer groups are, in my view, not adverse and, to the extent possible the nature and quality of the working relationship should be reflective of this fact. I believe the change which has been inplemented redirecting the approach to consumer product safety is a good one. I would hope to foster and further encourage the nonadversarial voluntary standard process to promote government and industry efforts to provide adequate and cost-effective safety to consumers. I believe that the extent to which the CPSC develops a cooperative working relationship with the consumer groups and industry, its credibility, effectiveness and ability to reach its objectives will be enhanced.

Question. Do you believe that the Consumer Product Safety Commission should remain an independent regulatory agency or should the agency be incorporated within one of the executive departments?

Answer. Since its formation as an independent agency, the CPSC has been highly successful and has achieved an excellent record of effectively addressing consumer product safety concerns. I believe that in order to perform its mandate competently, the CPSC must be, and must be perceived as, an objective, fair, and compentent agency, independent of external controls. Incorporating the Commission into an ex-

isting executive department would, in all likelihood, suject it to numerous handicaps that inhere in departmental organization. Because the head of executive departments are always subject to removal without limitation, the incorporation would open the agency to the suggestion of partisan direction, and arguably render it more susceptible to political domination and control. Consumer product safety could become entombed in a larger bureau and not only required to compete with a multitude of other competing interests for the attention of the department head, but would arguably be more difficult for Congress to oversee. Based upon the performance of the CPSC to date, I am unaware of any advantage for its incorporation within one of the executive departments.

Question. Do you believe that the Consumer Product Safety Commission should continue as a five member Commission? Would you support or oppose the reorganization of the Commission into an agency directed by a single administrator?

Answer. At this point, not having served as a member of the Commission or its staff, I do not feel at all qualified to assess the appropriateness of reorganization of the Commission into an agency directed by a single administrator. I would want to study the question further before taking any position beyond making a general observation that during its relatively short existence, the CPSC has established a good reputation and appears to have functioned exceptionally well—in terms of results—as a five member Commission, comprised of individuals drawn from different political parties and reflecting a diversity of perspectives.

Question. Do you believe that the Commission's priority getting mechanisms are adequate? If not, what do you believe would be a more effective means for establishing Commission priorities?

Answer. Since I have not taken part in the priority setting mechanism at the CPSC, I must, of course, qualify any evaluation of its sufficiency. In reviewing what has been done in the selection and implementation of priority projects, it appears that the mechanism has the capacity to be very effective. As I understand it, the Commission receives input from staff and consumer groups in addition to consulting available injury data in order to identify existing and potential hazards. A consensus is reached as to the priorities for the coming year following an in-depth process in which the nature and severity of the risks associated with particular consumer products are weighed and considered with the benefits and costs of the CPSC action, in light of the limited Commission resources. If permitted to serve, I intend to review the degree of participation and input of affected industry, consumer, and state and local groups, and to work to continue and improve such a procedure for the extremely important task of allocating priorities in consumer safety.

Question. In 1981 the Committee voted to emphasize the use of voluntary standards over the application of mandatory standards. What are your views regarding voluntary and mandatory standards?

Answer. I believe that both standards are appropriate and essential to effect the Congressional mandate of protecting the public against unreasonable risks of injury associated with consumer products. The current emphasis encouraging the development and adoption of voluntary standards is a positive and promising step towards an effective, cooperative partnership between the agency and industry. In these days of reduced governmental resources, it is essential to find creative, expeditious and cost-effective ways to protect citizens from deaths and injuries and, at the same time, reduce unnecessary governmental involvement. I perceive this process as positive because its essence is the cooperative association of different groups, effectively coping with a diversity of interests and harmonizing them to produce a product standard of benefit to industry, the government and the consumer. The voluntary standard process is also a more flexible approach, with the capacity to produce a more comprehensive product standard. Nonetheless, I believe that it is also essential that the Commission fully and timely exercise its rulemaking authorities to ensure that the safety of the consumer is not compromised in those instances in which such cooperation is not forthcoming. I perceive the mandatory standard process as a fundamental and effective mechanism to safeguard the agency's capacity to discharge its statutory obligations, and not settle for a level of product safety inconsistent therewith. I believe that the Commission's successes with the voluntary standards have been, and will continue to be, facilitated by its ability and willingness to proceed with mandatory rulemaking when voluntary efforts fail.

Question. How do you visualize the relationship between the Consumer Product Safety Commission and state and local authorities?

Answer. Cooperation between state, local and federal authorities is an inherent part of any effective law enforcement, and has been since the very founding of our federal system. The CPSC is one of the smallest regulatory agencies, yet it is charged with the enormous task of overseeing literally thousands of consumer prod-

ucts in this nations' marketplace. I believe that it is critical to the success of any effective nationwide product safety program to develop a mutually beneficial, cooperative, working relationship with state and local authorities in order to timely identify emerging health and safety hazards and to ensure that federal standards are duly enforced. Utilizing the expertise and resources which exists among state and local groups would avoid unnecessary overlap and duplication in the exercise of these separate jurisdictions, and benefit the agency in such areas as research, outreach, information and education, compliance review, and investigation. Such mutually beneficial cooperation, as mandated by the Consumer Product Safety Act, will be one key goal of mine in leveraging this small health and safety agency's limited resources to enhance its capacity to monitor the marketplace, and at the same time, assisting state and local government efforts for the common good of all our nation's consumers.

Question. What percentage of the Commission's budget do you believe should be allocated to education rather than standard setting activity?

Answer. I am aware that a limitation of 7 percent was set for 1984. Not having served on the Commission or its staff, I cannot evaluate the wisdom or practicality of this limitation, nor suggest the exact ratio between spending for consumer education and standard setting activities. It is fundamental that the Commission must marshall its resources toward all activities which are designed to, and are effective in, reducing consumer exposure to unreasonably hazardous products. The proper allocation of resources between educating consumers about how they should behave to increase their safety, and mandating certain behavior or devices, is not a simple issue. There are some hazards that information and education will eliminate, and some for which standards are necessary to successfully reduce the risk. There is a need to evaluate the various information and education efforts to determine how effective they have been in actually altering consumer behavior and successfully reducing injuries, in order to identify and focus on those activities which are effective and likely to bring the most benefit to the consumer. Just as it is necessary to evaluate the cost and benefits to regulatory standard setting, it is equally important to evaluate the cost effectiveness of the educational programs. I intend to work to undertake such evaluation programs at the CPSC to ascertain the utility of the techniques and methods which have been employed, and the conditions under which we might expect education to be the proper safety-enhancing mechanism, and when we need to employ standards.

Question. What types of consumer education programs do you believe are most effective?

Answer. Information and education programs which are designed to reach the maximum number of consumers within the population at risk and which focus on and encourage specific behavior vis a vis á hazard thereby enabling consumers to provide for personal safety, is one effective technique. The smoke detector campaign is an excellent example of the efficacy of this method. Product labelling, specifying the consequences of the product's misuse, is another important form of consumer education. However, it is extremely difficult to intelligently select the type of education program, or combination of programs, most effective in any given set of circumstances, absent some empirical indication of the utility of the techniques. Like any regulatory action taken by the CPSC, the education programs employed should be critically examined to ascertain what methods have been effective, under what circumstances, and the reasons. These analyses will permit the Commission and staff to provide for and maximize the safety of the consumer with a minimal depletion of resources, by enabling the agency to intelligently assess and predict, with some degree of certitude, the most appropriate programs for a diversity of situations.

Question. What steps will you take to preserve your independence from political and industry pressures? What provisions in the Consumer Product Safety Act do you see as designed to preserve your independence from such pressure?

Answer. I intend to adhere to the provisions of the Sunshine Act, with Commission policies and regulation regarding open meetings, and to ensure that all actions which I take as a Commissioner have their basis in the purpose and intent of the five acts administered by the agency. However, not having served on the Commission, it is difficult to evaluate at this point what additional steps will be necessary to preserve my independence from political and industry pressures. The provisions of the Consumer Product Safety Act most designed to ensure a Commissioner's independence from external pressures are found in Section 4, although other provisions found throughout the Act tend to complement these provisions. The provisions relating to the number and political diversity of the members, the length and certainty of their tenure, prohibitions on outside business activities and simultaneous

submission of legislative recommendations, all vitally contribute to their independence from such pressures.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question. One of the major issues facing the House-Senate Conference Committee on the CPSC's reauthorization is Congressional review of regulatory actions in light of the Supreme Court's ruling in *INS.* v. *Chadha* that the legislative veto is unconstitutional.

After that decision, the House attached two different review mechanisms to the CPSC authorization bill on the floor—the first proposed by Congressman Levitas would require a resolution of approval passed by both Houses and signed by the President before a regulation could become effective; the second, proposed by Congressman Waxman would provide for a resolution of disapproval, passed by both Houses and signed by the President to stop a regulation from taking effect. What are your views on these two approaches?

Answer. Let me state at the outset my view that since Congress and the Chief Executive are the elected representatives, and not the regulators, they have a clear and important role in reviewing regulatory actions to ensure that delegated powers are exercised in the contemplated manner. I also believe, however, that the Commission has a responsibility to efficently and expeditiously discharge its statutory obligations of protecting the public from unreasonable risks of injury associated with consumer products. The question then becomes the proper and most effective procedural mechanism in effecting this oversight and control in light of the *Chadha* decision. The two proposals of Congressman Levitas and Congressman Waxman, of which I am familiar, are control devices designed to secure agency accountability and congressional involvement in the regulatory review process prior to the regulations taking effect. While the *Levitas* proposal, requiring Congressional affirmation of every regulatory action subject to its control, would achieve the goal of affording active congressional control of the details of regulatory actions, I believe the *Waxman* measure, requiring Congressional response only when Congress disapproves of an action, would enable the agency to retain its current regulatory authorities with less intrusion into its day-to-day activities. I believe that there is a need to harmonize the need for accountability of delegated powers and the requirement that the effective exercise of those powers not be unduly hampered. By requiring item-by-item approval, the *Levitas* proposal transfers the rulemaking authority from the agency to Congress, leaving open to question the resulting status of the agency, as well as its capacity to function credibly and effectively. With the current agency emphasis on voluntary standard activities, the impact of this measure on the incentive of industry to cooperate fully with the agency and the agency's ability to continue to successfully pursue these standards are also open to question. Also open to question, is whether Congress will be able to legislate in all areas embraced by the agency's regulatory activities in a timely fashion, whether the measure will result in a duplication of the agency's investigative and deliberative activities, and whether, on balance, it will be in the interest of the consumer to require every regulation signed off by the House, Senate and President. Time lapses in implementation of regulations can leave the Commission, charged with providing a safe marketing environment, unable to secure congressional approval of the tools needed to accomplish its goals. Whatever oversight device is ultimately selected, the Commission and the Public will be better served if Congress maintains involvement and control over the regulatory lawmaking process to ensure that the policies embodied in the statutes administered are not defeated by agency implementation. Separation of powers will and can be retained regardless of the solution implemented, and the public good protected by involvement of the elected representatives.

Question. Would you support or oppose further staffing cuts at the CPSC (below the current staff level of 636 position for fiscal year 1983)? Would you support or oppose further reductions in the CPSC's budget?

Answer. I realize that in 1981, the CPSC experienced nearly a 25 percent reduction in resources. Not having been a member of the Commission, nor having had a first-hand opportunity to evaluate staffing, budgetary resources, and how they relate to the Commission's priorities, this is a very difficult question to answer. However, having been in government at the local, state and federal levels, I recognize there is always room to evaluate and prioritize the level and deployment of resources. I believe that consumer product safety is a very serious matter, and has the potential to rank among the nations major health and safety concerns, to the extent that a consumer product hazard unreasonably imperils the safety of a large number of American consumers. To the extent that any budget and staffing reductions cur-

tail the Commission's ability to effectively and promptly fulfill its mission of protecting the consumer, such reductions potentially detract from the agency's effectiveness, credibility, and utility.

Question. One of the issues in this year's reauthorization was the disclosure of product hazard information. Business interests supported the present law (Section 6(b) of the Consumer Product Safety Act), and believe that the agency attempted to circumvent the law in the new regulations. Consumer groups advocated reducing the restrictions on the agency's disclosure of product hazard information. What are your views on this issue?

Answer. The 1981 amendments establishing Section 6(b) and the restrictions on disclosure of product of company specific information are designed, I believe, to establish a delicate, yet important and working balance between the consumers' need to know and the manufacturers' right to be protected against misleading and inaccurate disseminations of information, whether under FOIA or by affirmative Commission disclosures. Not having been a member of the Commission, I am unaware of any Commission attempts to circumvent the law in new regulations implementing Section 6(b), of the precise extent to which administrative or practical difficulties, in terms of time and resources, have been encountered in complying with its provisions. However, because of the potentially devastating impact which "trial by press release" and disclosure of inaccurate or erroneous information regarding a product's safety can cause, especially to small businesses, as well as detracting from the credibility of the agency, there is an understandable need to move cautiously and prudently in this area. If allowed to serve, I will review the FOIA and affirmative disclosure procedures and the steps taken to implement the purpose and intent of Section 6(b), with an eye toward striking the necessary balance between the obligation of the CPSC to inform the public as fully and expeditiously as possible about hazardous products, with its obligation to provide the necessary safeguards to manufacturers and private labellers when products specific information is disclosed.

Question. What specific qualifications do you have that will enable you to serve as a Commissioner at the CPSC?

Answer. I have been firmly committed for most of my professional career to the protection of the public from risks and injuries, utilizing a diversity of federal, state and local regulations, statutes, and other authorities. I have also been deeply involved in the identification and amelioration of substantive and procedural deficiencies in these laws, striving to provide for such protections while avoiding needless and inadvertent dertrimental impacts on those regulated. The CPSC is charged with the enormous task of protecting the public from unreasonable risks of injury associated with consumer products. I believe that my academic training, coupled with my practical experience as a trial lawyer, legislative committee staff attorney, appellate court law clerk, law enforcement officer, and consumer, will be of substantial assistance to the Commission and have equipped me with the necessary sensitivities and foundation to effectively administer consumer safety laws. The experiences I have gained through conducting and directing investigations, compiling and evaluating facts and evidence, prosecuting statutory violations, drafting and analyzing legislation, working and negotiating resolutions, and reviewing matters on appeal, will all be of benefit to the Commission and, when combined with objectivity, openmindedness, and common sense, will be of tremendous value in assessing the vast amount of technical information which the CPSC must thoroughly examine before making decisions in both the areas of mandatory regulation and administrative actions. The analytical experiences I have gained in weighing the practical, economical, and legal impacts of regulations and statutes, together with my understanding of the enforcement process, will enable me to apply the law to a careful analysis of the facts and to make the difficult decisions required of a Consumer Product Safety Commissioner.

Question. In your opinion how important is the Consumer Product Safety Commission's § 15 recall authority as an enforcement tool?

Answer. I believe that the CPSC's recall authority under § 15 is a very important tool. It is generally perceived as one of the most important aspects of the CPSC's work, as evidenced by its being designated a priority item for fiscal year 1983. § 15 recalls have had a dramatic effect on saving lives and preventing injuries; the agency has estimated that use of this authority has prevented more than 1 million injuries annually.

Question. Would you consider § 15 a better enforcement tool than the use of mandatory standards?

Answer. I believe that the agency's § 15 authorities are a supplement to, and not a substitute for, standard setting activities. I would consider § 15 an ideal enforcement tool because recalls of hazardous products are an expeditious, cost-effective

tool for responding to clear emergencies, as well as an effective method of notifying a substantial number of consumers who may be exposed to substantial product hazards. On the other hand, while mandatory rulemaking is a longer, more difficult route—often taking several years—it too has built-in advantages. While § 15 tends to be product-specific, mandatory rulemaking permits the CPSC to address and correct generic problems associated with a product. This permits an industry-wide solution and avoids a need for a case-by-case solution.

Question. How does the CPSC's recall authority mesh with other enforcement tools available to the Commission?

Answer. The most effective enforcement tools of the CPSC are § 15 and rulemaking. § 15 meshes with rulemaking in the sense that it is generally designed to address product, or manufacturer-specific hazards, and rulemaking is generally designed to respond to hazards which are generic in nature. Rulemaking, while prospective in nature, affords more time to thoroughly examine a generic problem resulting in broader and more specific and detailed solutions.

[Whereupon, at 11 a.m. the hearing was adjourned.]

NOMINATIONS—COMMUNICATIONS SATELLITE CORPORATION AND CORPORATION FOR PUBLIC BROADCASTING

MONDAY NOVEMBER 7, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 12:59 p.m., in room SR-253, Russell Senate Office Building, Hon. Barry Goldwater, presiding.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. I want to call the meeting to order. I want to apologize for not having more members of the committee present, but we are in the midst of a big fight on the floor that is liable to go on and on and on. I think that is where most of the people are, although I think some of them should be here. But that does not make any difference.

I would like to welcome you today to our nomination hearings. We will be considering the nomination of Mr. Neal B. Freeman of Virginia, to the board of directors of Comsat. We also have two nominees for the board of directors of the Corporation for Public Broadcasting: Mr. William Hanley, Jr., of Connecticut, and Mr. James Hackett of Virginia.

We will be hearing from Mr. Freeman separately, and then we will have Mr. Hanley and Mr. Hackett together.

All of these three gentlemen have had distinguished careers in the private sector or in Government. Mr. Freeman is currently with Jefferson Communications in Reston, Va., and has a great deal of experience in print communications. He also, I might add, was a director of the Corporation for Public Broadcasting's board from 1972 to 1975. He may have some hints for the others.

Mr. Hanley is head of Hanley, Inc., in New York City and a partner in Black, Manafort & Stone in Virginia. He has been very active in local, State, and national politics in Connecticut.

Mr. Hackett has just recently retired from a lengthy stay in the State Department, the Arms Control and Disarmament Agency, and the U.S. Information Agency. He is presently a visiting scholar at the Heritage Foundation.

Gentlemen, it is a pleasure to have you with us and, Mr. Freeman, we will take care of you first. We have your background and it is a matter of record, so we do not need to go into that.

But, as you may have heard, I have more than a slight interest in what you will be doing. In fact, last Friday night it was my pleasure to attend the convention in Orlando by the satellite TV people and I personally think that within 5 years that is going to be the only television we have.

Are you aware of the private companies that are now petitioning the FCC for authority to provide certain services across the North Atlantic which may impact Intelsat and its ability to fulfill its functions, and do you believe that the FCC should grant these petitions?

STATEMENT OF NEAL B. FREEMAN

Mr. FREEMAN. Mr. Chairman, I pretend to no expertise on that issue, but I am generally aware of the arrival of the free marketplace in international communications. As to the specifics of the FCC decision, I would not want to venture an opinion until I have had some time to immerse myself in the issue and, particularly, in Comsat's activities in that regard.

Senator GOLDWATER. Well, I think you are wise. I do not think, frankly, it has gone far enough for anyone to have had the opportunity to develop any firm opinion on it. There is always going to be this question of whether the Federal Government will control the frequencies that go up to the satellite and back or whether we are going to have others stepping in.

And it is not an easy question to solve or answer. In fact, as you know, we are in the middle of some of that right now.

Mr. FREEMAN. Yes, sir.

Senator GOLDWATER. So take a good look at that and study it. I would even suggest that you go to some of the private people and get their opinions.

What is your general philosophy in promoting competition in telecommunications services?

Mr. FREEMAN. My general philosophy is perhaps easier than the hard decisions of practical matters. My general philosophy, having spent 20 years in the communications business, is that there ought to be as free, as open, as diverse a marketplace for ideas and expressions of opinion as possible.

I understand that sometimes that philosophy must give way to overpowering practical reality, but my general predisposition would be in favor of the marketplace and highly skeptical toward regulation.

I do not think that philosophy is out of place in these times or in this place.

Senator GOLDWATER. No, it never has been. Of course, there is always the overriding fact that ever since back in the 1920's the Government has had control of frequencies and there is also a constant battle for the frequencies that become available.

I remember when I first started in communications we were measuring frequencies in meters, and now we are up to gigahertz and there is a name for something above gigahertz, but I will be damned if I can remember it.

Mr. FREEMAN. Nick Zapple would know, who is here today. He probably created it.

Senator GOLDWATER. The Budget Bureau knows it, but I have not worked up to them yet.

I have no other questions. I think your qualifications prepare you for service with the Comsat Board. I think you will find it an extremely interesting part of your life because you are just starting.

Comsat will come into the open marketplace probably in 3 or 4 years, and, as you know, we are already doing some remarkable work in pulling television signals off of the satellites. It is hard to believe what they are doing and how far they have progressed with the science. I envy you and I wish you well. I know you will do well.

You are serving with a very fine Board, dedicated people who have been with this from the start. So not having anybody here to ask whether they will vote for you or not, I will just announce that you have my vote.

Mr. FREEMAN. Thank you, Senator.

Senator GOLDWATER. We will poll the others and I will ask the staff to accomplish that today, if possible.

I understand that the minority side of the committee has sent you some questions.

Mr. FREEMAN. That is correct. I just received them and I will answer them promptly.

Senator GOLDWATER. And you can take care of those when you can. So you are now through and you can go your way.

Mr. FREEMAN. Thank you, Mr. Chairman.

[The biographical sketch and answers to questions of the committee follow:]

BIOGRAPHICAL SKETCH OF NEAL B. FREEMAN

Address: 2367 Hunter Mill Road, Vienna, Virginia 22180.
Date and place of birth: July 5, 1940, New York, New York.
Marital status: Married—Jane Louise Metze.
Names and ages of children: Malcolm T., 16; James B., 14; and Kathryn R., 11.
Education: Manhasset High School, Manhasset, N.Y., 1954-55; Phillips Exeter Academy, Exeter, N.H., 1955-58, Diploma; Yale University, New Haven, Conn., 1958-62, BA.

EMPLOYMENT

1976-present: Jefferson Communications, Inc., 11730 Bowman Green Drive, Reston, Va., Type-Executive.
1967-1976: The Hearst Corp., 235 East 45th Street, N.Y., N.Y., Type-Executive.
1966-1967: Arlington House, 81 Huguenot St., New Rochelle, N.Y., Type-Editorial.
1965-1966: Washington Star Syndicate, 444 Madison Avenue, N.Y., N.Y., Type-Editorial.
1963-1965: National Review, 150 East 35th St., N.Y., N.Y., Type-Editorial.
1962-1963: Doubleday & Co., New York, New York, Type-Trainee.

GOVERNMENT EXPERIENCE

1982-Present: Panelist, President's Commission on White House Fellows.
1980-1982: Lecturer, Senior Executive Seminar, Department of State.
1980: Consultant, ACTION/Peach Corps.
1974-1977: Commissioner, President's Commission on White House Fellows.
1972-1975: Director, Corporation for Public Broadcasting.

MEMBERSHIPS

National Cartoonists Society, Inter-American Press Assoc., American Shakespeare Theatre, National Press Club, York Country Club, Sigma Delta Chi, Yale Alumni Fund-Class Agent, and Yale Club of NYC.

Member, Republican Party of Virginia, contributions to: Warner for Senate, $100 (1978); Bell for Senate, $100 (1978); Fairfax Co. Repub. Pty., $100 (1979); Schuettinger for Senate, $25 (1980); Coleman for Governor $20 (1981); Trible for Senate, $125 (1982); Hatch for Senate, $100 (1982); Sundquist for Congress $100 (1982); and Friends of John Warner, $100 (1983).

Honors: Received Yale B.A.—magna cum laude.

Published writings: Articles and reviews have been published over last ten years in National Review, Washington Post, New York Times and The Washingtonian.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question 1. As director of the Board of the Communications Satellite Corporation (COMSAT), what issues will be of primary importance to you?

Answer. The most important issues, in my view, will be those that relate directly to the responsibilities of a Director, namely the fiduciary responsibilities to the owners of the Corporation and the public responsibilities to which the corporation has been assigned in the field of international communications.

From time to time, and from place to place, those issues will take different forms. The adjustment to a new regulatory environment and the pursuit of non-rate-regulated businesses will be two immediate challenges.

Question 2. What is it in your background that you believe makes you well suited to undertake the responsibilities as director of the Board of COMSAT?

Answer. I have for twenty years been professionally involved in the communications industry—as writer, editor, producer and executive. I have held line jobs in billion-dollar communications firms and in entrepreneurial start-ups. I have studied the problems of the communications industry as a journalist and I have held public responsiblity for solving some of them.

Question 3. What are your views regarding the encouragement of competition in providing international satellite communications services and international satellite transmission facilities?

Answer. My predisposition on the question is that competition should be encouraged almost everywhere and almost always. In considering specific situations, of course, one must factor in the additional considerations of law, market conditions, diplomatic realities, technological and financial feasibility, and so on.

Question 4. Do you have any personal or financial holdings in COMSAT or any other communications entities? If so, how would you ensure that your actions on the Board of COMSAT are not influenced by the competing interests of other communications companies?

Answer. I have no personal or financial holdings in COMSAT and a modest position (300 shares) in Media General, Inc. My understanding is that COMSAT, owing to its peculiar corporate history, has a sophisticated conflict of interest program. I would comply fully with that program and, beyond that, remain sensitive to issues of competing influence.

Question. 5. COMSAT is engaged in commercial global satellite communications serving the United States through INTELSAT and INMARSAT. With the emergence of Direct Broadcast Satellite (DBS), COMSAT will assume additional responsibilities to further serve our citizens. In light of COMSAT'S increasing move towards higher communications technology, what would be your role as board member in this corporation?

Answer. It is my understanding that COMSAT considers one of its basic mandates stemming from the 1962 Satellite Act to be that of continuing the development of communications satellite technology. COMSAT's involvement in Direct Broadcast Satellites is part of this continuing mission. As a member of the Board of Directors, I believe my responsibility would be to protect the interest of the shareholders in a manner that is also consistent with COMSAT'S statutory mandate. Each new business of COMSAT would be viewed from these perspectives.

Senator GOLDWATER. I will call Mr. Hanley and Mr. James Hackett. Welcome to both of you. Your are stepping into public broadcasting at a very important time in its history. You will be serving under a person I consider to be as good, if not better, a chairman as any we have had operating our various boards.

Public broadcasting has just gone through some financing problems that we will not be able to get into ourselves until the Gener-

al Accounting Office is farther along. That might be next year sometime, and the way they operate, it might not ever be.

Just a couple of questions. I wanted to ask you, did you get some questions from the minority side of our committee?

Mr. HANLEY. Yes, we did.

Mr. HACKETT. Yes, we did.

Senator GOLDWATER. The Temporary Commission on Alternate Financing for Public Broadcasting recently recommended to Congress that public broadcasters be allowed to use extended underwriting credits but that public broadcasters still should be prohibited from advertising.

Do you have any views on advertising on public broadcasting? You can both answer that.

STATEMENTS OF WILLIAM LEE HANLEY; AND JAMES T. HACKETT

Mr. HANLEY. I guess my feelings prior to hearing from some of the other board members the other day were fairly favorable, having seen what channel 13 in New York has done with the experiment. The ads that they put on in no way interrupted the programing itself. They were very tastefully done, very low key, and it seemed to be a means of getting added revenue, which is very critical to all the local stations.

As I say, subsequently I heard some other views that would run counter to that, and I would have to, I guess, temper what had been my original positive reaction to hearing more about it in the future.

Senator GOLDWATER. Mr. Hackett, do you have a comment?

Mr. HACKETT. Senator, last week we had the privilege of listening to Mr. Charles McCarter, who is the head of the public television station in Chicago, who came to Washington and briefed the Board of the Corporation for Public Broadcasting on the experiences his station had with the experiment that was conducted under the alternative financing program.

I was there as an observer and listened to the presentation which I thought was extremely interesting. It seems that they did a good job in Chicago of tasteful advertising, and it occurred to me that perhaps the word alternative financing is not the right word. Perhaps it ought to be supplemental financing, because I gather that a number of the stations are concerned that whatever form of financing is developed it should not replace the existing grants and sources of funds.

So considering that fear, I think that perhaps supplemental sources should continue to be sought.

Now with regard to the specific recommendation, I have not seen that and I do not know enough about the details of that recommendation to be able to comment on it at this time.

Senator GOLDWATER. I think public broadcasting has gotten alone so well without the type of advertising that some people think of when you say advertising—item advertising, showing the item and so forth.

I particularly like the small printed announcement that comes with the program—financed by Valley National Bank or financed

by the Ford Motor Co. In fact, I have often, not facetiously either, said to the big networks that if they would do that kind of advertising they would get a lot more friends.

Mr. HACKETT. I think we share our dislike of the obnoxious type of advertising that appears frequently on commercial television.

Senator GOLDWATER. That is right. Nothing makes you madder than to have a football game interrupted just to have them talk about Goodyear Rubber or Ford Motor. There are days I will swear I will never buy either one, because I do not like to have a good play broken up.

I think if you stick with what you have been doing, you will be all right.

One other question. What do you believe is the role of the Corporation for Public Broadcasting, and how do you view your future role as a Director of that Corporation?

Mr. HANLEY. Well, I view the role of the Board really as, I guess the word that has been used, it is sort of a heat shield between the public stations and undue or any kind of political interference, so in fact you have true public boadcasting as such.

As far as my contribution, unfortunately at this late date and due to the length of the term I am not overly hopeful that I will be able to contribute that much. I had felt that my business background, particularly, had suited me to helping to oversee what is the use of a substantial amount of the taxpayers' dollars.

So I think, unfortunately, as I look at it I view it as a great honor to have been nominated and, of course, to be here, sir, but it is a timeframe and I am just not sure what can be accomplished and what I can contribute in that short a period of time.

Senator GOLDWATER. Thank you.

Mr. HACKETT. I see the role of the Board, Senator, as being to represent the public's interest. With regard to my own participation, I have no particular agenda. I am going to join the Board, if the Senate confirms my nomination, and help them in any way I can.

Senator GOLDWATER. Well, I thought that would be your attitude and it is a very good attitude to go on the Board with.

As I said earlier, it is a fine Board. They do good work and accomplish a lot, and that is the important thing. Public Broadcasting, to me, is a very important part of our communications life. I may be prejudiced, but our public system in Arizona is a remarkably fine group. They give the standard network a real challenge all along the way, even though that is not your function.

Somebody said the other day that people do not listen or look at stations; they look at programs and listen to programs. And the better you can put on, the more you will be listened to.

You have indicated that you have the questions from the minority side.

Mr. HACKETT. Yes, Senator, we do.

Mr. HANLEY. Yes, Senator, we do.

Senator GOLDWATER. If you can answer those as soon as you can.

Knowing of no other questions, I guess we might as well knock off. The meeting will stand adjourned.

[The biographical sketches and answers to questions of the committee follow:]

Biographical Sketch of William Lee Hanley, Jr.

Address: 81 Butternut Hollow Road, Greenwich, CT 06830.
Date and place of birth: January 27, 1940, New York, NY.
Marital Status: Married, Alice Hoffman Hanley.
Names and ages of children: Carroll, age 20; Allison, age 18; Brooke, age 12; Nicole, age 6; Merrill, age 3.
Education: St. Paul's School, 1958; Yale University, Bachelor of Arts, 1964.
Employment: Hanley Company, Summerville, PA, Management (1964–1966); Hanley Inc. (formerly Hanley Company), 420 Lexington Avenue, New York, NY 10170, President, 1971, Chairman, 1974; Black, Manafort and Stone, Inc., Alexandria, VA, Partner.
Government experience: Elected Member, Representative Town Meeting, Greenwich, CT (1967–1972); Member, National Petroleum Council (1982–Present).

MEMBERSHIPS

Co-Chairman, Special Gifts II Division of Greenwich Hospital Capital Drive (1979–1981); Trustee, Greenwich Hospital (1979–Present); Chairman, Greenwich Hospital Planning Committee (1982–Present); Member, St. Paul's School Alumni Association (1979–1983); Founder and Vice President, Greenwich Committee for Quality Health Care, Inc. (1979–Present); Trustee, Boys' Club of Greenwich (1980–Present); Trustee, Greenwich Academy (1972); Young Presidents' Organization, Inc. (YPO), Metro Chapter (1979–Present); YPO, Metro Chapter, Communications Chairman (1981); YPO, Metro Chapter, Executive Committee and Luncheon Chairman (1982); YPO, Metro Chapter, Executive Committee and Education Vice Chairman (1983); Director, J. M. Foundation (1982–Present); Trustee, International Center for the Disabled (1982–Present); Brick Institute of America (1979–1980); Tile Council of America (1977–1981); Fishers Island Country Club, Fishers Island, NY; Racquet & Tennis Club, New York, NY; The Brook, New York, NY; Rolling Rock Club, Ligonier, PA; Round Hill Club, Greenwich, CT.

POLITICAL AFFILIATIONS

Executive Director, Connecticut Reagan-Bush Committee (1980); Co-Chairman, Greenwich Ronald Reagan for President Committee and Co-Ordinator, Greenwich-Stamford Reagan for President Committee (1980). Delegate to 1982 Connecticut State Republican Convention; Delegate to 1980 Republican National Convention; Delegate to 1980 Connecticut State Convention; Alternate to 1978 Connecticut State Convention; Member, Republican State Finance Committee and Alternate Member of Building Committee (1968–1972); Member, Republican Town Committee (1978–Present); Chairman, Greenwich Republican Finance Committee (1979–1980); Treasurer, Greenwich Republican Town Committee (1980–1981); Vice Chairman, Greenwich Republican Town Committee (1982); Executive Committee, Greenwich Republican Round Table (1980–Present).
Donations: Republican National Committee, Connecticut State Republicans, Greenwich Republican Party, New York State Republican Party, Jack Kemp for Congress, Bush for Senate, NCPAC, Jeff Bell for Senate, Lew Lehrman for Governor, McKiney for Congress, Robin Moore for Senate, Reagan for President, Bush for President, Golla for Mayor, Buckley for Senate, Rome for Governor, Post for Governor, Labriolla for Governor, Povinelli for Mayor, Evans for Congress.
Honors and awards: Honorary Life Trustee, Greenwich Academy (1982).

Questions of the Minority and the Answers Thereto

Question. What do you think of the programming on public broadcasting?
Answer. The programming on public broadcasting is meeting many of its goals of serving diverse segments of the public by offering programming that could not be produced and broadcast by commercial stations.
Question. As a director of the Board of the Corporation for Public Broadcasting (CPB), what do you think your role should be in deciding what types of programs should be put on public broadcasting?
Answer. As a director on the board of CPB, I would view my role in programming as to help formulate priorities for future programming, as well as reviewing past program results as a guide to future priorities.
Question. As a director of the Board of the CPB, what issues will be of primary concern to you?

Answer. As a director on the board of CPB, I feel major issues concerning me would be to feel confident that the taxpayers' money is properly spent and accounted for. In addition, alternative (more properly supplemental) funding outside of public funding needs very careful consideration.

Question. Federal funding of public broadcasting has been a topic of concern to many. For example, National Public Radio (NPR) was recently bailed out of a financial crisis; and press releases indicate that NPR has already exceeded its 1984 budget.

(a) How do you view federal funding as a method of financing public radio and television?

(b) What are your views regarding alternative financing for public broadcasting?

Answer. (a) Federal funding is essential to public broadcasting to provide the base funding and allow for advance funding for programs and support systems. If its goals are to be met, a continued crisis climate cannot exist.

(b) With federal funding providing the base support dollars, alternative financing for added and enhanced programming and station support should be studied in detail. It cannot be viewed as an alternative to federal and local funding, but as a supplement to existing funding.

Question. How will your past experience as a businessman be an asset to the Corporation for Public Broadcasting?

Answer. My business experience should be an asset to the Corporation in several different areas. Cost control, as well as oversight of spending, are areas that as a director of CPB I feel I can contribute to. In addition, I serve on the boards of two non-profit corporations in the health field—in finance on one and planning on the other—that have given me insight into problems of measuring management insight, execution and performance that is more difficult to quantify without the profit motive.

BIOGRAPHICAL SKETCH OF JAMES T. HACKETT

Address: 219 Hillsdale Drive, Sterling, Virginia.

Date/Place of Birth: March 26, 1931 Boston, Mass.

Marital Status: Married to Sumiko Uchiki Hackett since 1951.

Children: Roger age 27, a Ph. D. candidate at Cornell and Stephen, age 17, a high school student.

Education: Univ. of Southern California, 1955–1959 and Armed Forces Staff College, 1969–70.

EMPLOYMENT

Entered the U.S. Foreign Service as a career foreign service officer in April 1959 and served in the U.S. Government continuously until retirement in Sept. 1983. While with the State Department, served in Washington from 1959–61, as Vice Consul at Panama 1961–63, Consul at Rome 1963–67, political officer at La Paz, Bolivia 1967–69, personnel officer in Washington 1970–71, as deputy executive secretary of the NSC staff 1971–73. Transferred to the U.S. Arms Control & Disarmament Agency and served as chief administrative officer of the agency from 1973–81; designated by the President as Acting Director of ACDA in 1981; appointed by the President with Senate confirmation as Associate Director of the U.S. Information Agency 1981–83. Retired from government service on 9/2/83. Currently a Visiting Scholar at the Heritage Foundation.

MEMBERSHIPS

Member of the Republican Party since 1948. Annual contributions to the national and Virginia Republican parties in the range of $200 to $250 per year. Contributions to individual Republican candidates in the range of $25 to $50.

Honors: ACDA Superior Honor Award 1977, and ACDA Meritorious Honor Award 1981.

Published writings: None, as a federal employee since 1959 I have not had the opportunity to write for publication.

Speeches: None during the past three years.

Qualifications: Over two years as a senior official of the United States Information Agency, which is responsible for the operation of the Voice of America, a public radio of the U.S. Government broadcasting daily around the world in 42 languages, in addition to longtime interest in and support for public television.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question. What do you think of the programming on public broadcasting?

Answer. For years I have been a devotee of public television. I consider the programming I have seen on the three public television stations that I receive at my home in northern Virginia to be exceptionally good. I have not listened to public radio at any length and, therefore, have not had an opportunity to form an opinion.

Question. As a director of the Board of the Corporation for Public Broadcasting (CPB), what do you think your role should be in deciding what types of programs should be put on public broadcasting?

Answer. In my view the Board should be concerned with the overall quality of programming, and on a general basis, the priorities of the different types of programs. As a member of the Board, I would expect to participate in the Board's activities in the regard.

Question. As a director of the Board of the CPB, what issues will be of primary concern to you?

Answer. As I testified before the Committee, I have no particular agenda. If confirmed, I intend to become familiar with the issues facing the Board and to be helpful in any way that I can in addressing them.

Question. Federal funding of public broadcasting has been a topic of concern to many. For example, National Public Radio (NPR) was recently bailed out of a financial crisis; and press releases indicate that NPR has already exceeded its 1984 budget. How do you view federal funding as a method of financing public radio and television?

Answer. I consider federal funding necessary to assure that these important mediums remain on the air and retain their independence from the programming pressures of commercial sponsors. The level of funding, however, deserves careful review and consideration.

Question. What are your views regarding alternative financing for public broadcasting?

Answer. Instead of alternative financing, I would prefer to consider supplemental financing, which I believe should be sought by the public broadcasting stations from as many sources as possible, to supplement federal funding.

[Whereupon, at 1:45 p.m., the committee adjourned, to reconvene upon the call of the Chair.]

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